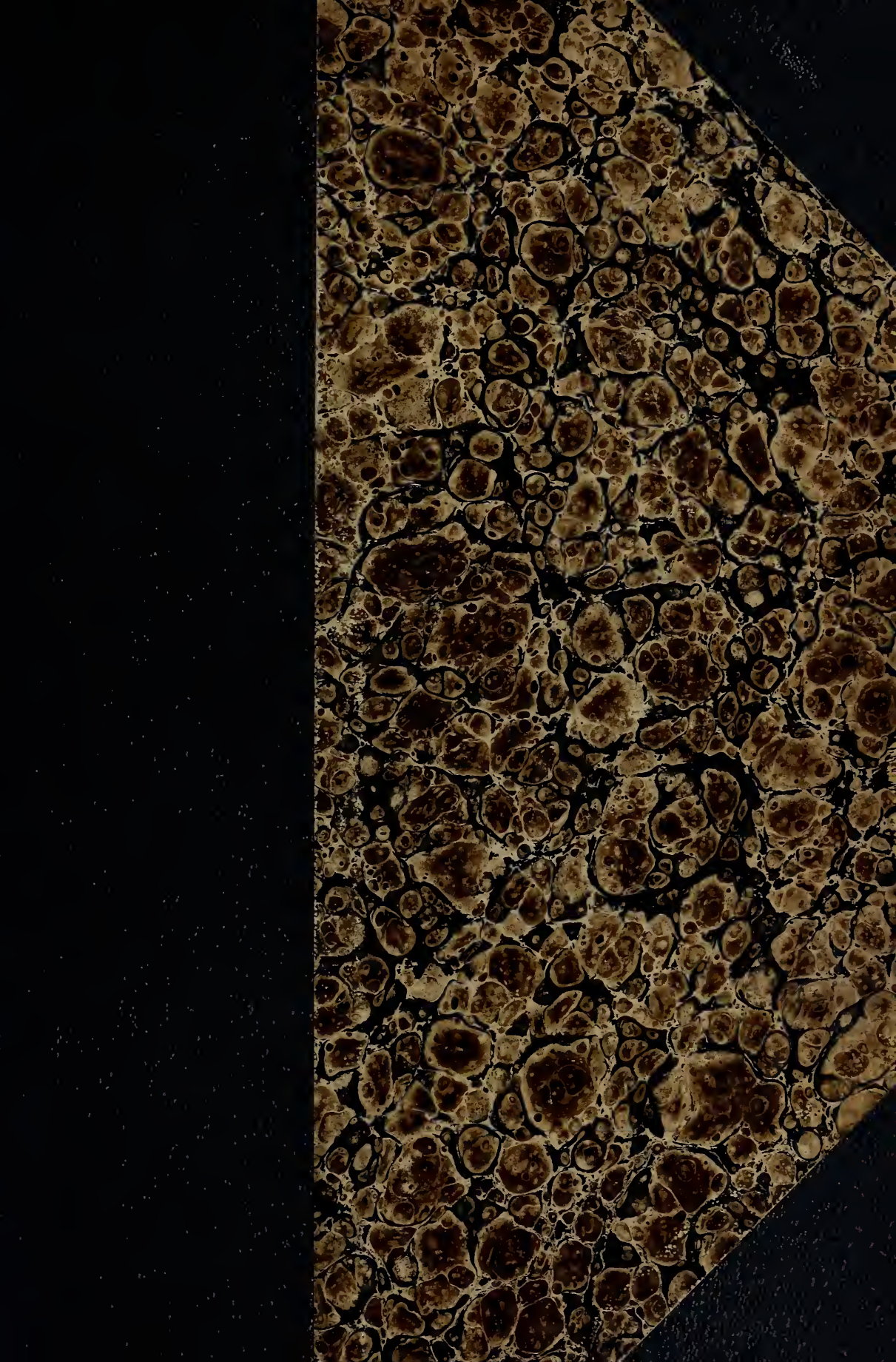




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Medico-Legal Bulletin.

Examination of Patient in Malpractice Suit.

The action for damages for personal injuries is filled with rules for pleading and practice, and none of these rules is surrounded with more difficulties than that as to the personal examination of the injured party. By this we mean the right of either party in the action to display the injuries to the jury or to medical experts who testify before the jury as to the facts. This testimony is what is called demonstrative evidence. It may often be the best means the defendant possesses for showing the falsity of the charge against him, while for the plaintiff it may be a most useful piece of ammunition for exaggeration by his counsel in influencing the minds of the jury. This evidence is especially valuable in the action for damages for personal injuries. The malpractice action, being an action of that nature, the use of evidence of this kind may be of peculiar value to one or the other of the parties, and especially to the physician.

Many cases of alleged malpractice are based on injuries which are fictitious and to show the real condition of the plaintiff an examination by qualified experts or inspection or a showing of the injured part of the body before the jury is the only means available to the physician with which he can defend the false charge made against him. To deny him the right to such evidence may mean his defeat, while to allow him the right to introduce testimony of this character can never do more than show the real facts in the case. If it is allowed, this testimony will in many cases defeat the plaintiff's action, particularly where the physician has to compel submission to the examination by order of court, for in that event the patient is anxious to have no showing of his real condition, so that he can uphold his blackmailing scheme; but he prefers to object to the examination and does not permit it until he is forced to submit himself by the order of the court.

The occasion for the use of the physical examination or showing in malpractice actions can arise in many ways. The patient may want to exhibit his own injured person to the jury or have his own expert physicians examine him, who in turn

testify as to what he has suffered at the hands of the physician to influence the jury in his behalf; or the physician may desire the patient to exhibit his injured person to the jury or present himself to his experts for examination for the purpose of determining the real nature of the injury and to explain to the jury the defendant's position in regard to it. If the patient consents to the examination or exhibition of himself at the defendant's request, there is no necessity of appealing to the court for an order requiring him to appear. It is only when the plaintiff refuses to consent to this examination or exhibition that the physician can get it, if at all, by order of the court.

This subject has received considerable attention by the various judicial sovereigns over this country and England, and no little confusion has resulted from the many decisions handed down. The courts have taken different positions in regard to the propriety of allowing the admission of such testimony as this. Some have held that physical examination is improper in any event; others permit the plaintiff to exhibit his injury to the jury, while others order the plaintiff, at the instance of the defendant, to submit himself to examination or to exhibit himself before the jury.

We must look to the common law of England for any principle or right, in the absence of a statute on the subject in the states, upon which the physical examination of the plaintiff can be refused by him or ordered or refused by the trial court. The first and primary end of all human laws is to maintain and regulate the absolute rights of individuals. These rights are few and simple and the ones with which we are concerned are those known as rights of personal liberty and security. These rights consist in each individual's "legal and uninterrupted enjoyment of his life, his limbs, his body, his health and his reputation," and the right of complete immunity; the right to be let alone. No right is held more sacred, or is more carefully guarded by the common law, than this right to the possession and control of one's own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.

In Blackstone's time the English courts were permitted, in their discretion, to try a case by "inspection, or examination." This was proper when for the greater expedition of a cause, in some point or issue which may be the principal question in the case or one arising collaterally out of it, but is obviously the object of the senses, "the judges of the court, upon the testimony of their own sense, shall decide the point in dispute." No jury was called for the decision of such a question. Facts settled in this manner were those of the age of a minor; whether one is

the party he claims to be; whether or no an individual is an idiot; whether the crime of mayhem as alleged is true in fact. For the purpose of determining the latter fact the court could call in surgeons to assist it in its inspection. This practice has long ceased, however.

Other uses of inspection or examination were made in the early days in the ecclesiastical courts of England, in the trial of divorce cases where the grounds of the divorce were such that the public, as well as the parties, had an interest in upholding or annulling the marriage contract. This practice came from the civil or canon law as administered in these ecclesiastical courts.

The common law of England allowed no such practices in civil actions, with the single exception that to protect the rightful succession to the property of a deceased person against fraudulent claims of illegitimate children, certain examining and restraining writs were allowed by the court. This practice has been made use of in recent years in that country in cases of that class, but in no others.

In the personal action, however, the common law courts of England seem never to have issued a writ compelling the plaintiff to submit his body for inspection. By the English Common Law Procedure Act of 1854, enlarging the powers which the courts had before, they are authorized, on the application of either party, to make an order "for the inspection by the jury, or by himself or by his witnesses, of any real or personal property, the inspection of which may be material to the proper determination of the question in dispute." No mention is made in this act of the right to inspection of the person, so we are compelled to believe that no such inspection, without consent, was allowed by the common law of England. If it were, we would surely find some, if not frequent, use of the writ. The common law court could not go so far as to order inspection of documents until the statute expressly authorized it, unless the document was pleaded on, much less then could it order an examination of that which is most sacredly guarded by the law.

We have now considered the position which the right to inspection of the person occupies in the common law courts of England and find that it has never been considered as occupying any position whatever, in the absence of a statute authorizing the writ. Our courts, acting independently of any statute on the subject, are bound by the constitution and common law precedents. If the constitution does not stand in the way and there are not precedents to follow, the court in a particular case is

warranted in deciding the new question as the justice of the case demands, provided no recognized rights of the person or property are invaded. This seems to be the situation in regard to the inspection of the person. There is no common law precedent and the constitution of the United States or that of any of the separate states does not prevent the granting of the writ of inspection. The only difficulty in the way is the absolute right to be let alone, which is violated when the writ is issued. There must be some legal cause for this violation or the order of the court is void. Some irreparable wrong must be done to the opposing party as a result of a refusal to grant this order, or the ends of justice must require this invasion of an absolute right.

The first case we have been able to find in the United States in which this writ was granted in an action for a personal injury is that of *Walsh v. Sayre*, in New York, decided in 1868, and reported in 52 How. Pract., 334. In that case the plaintiff brought suit against the defendant a surgeon, for an alleged unskillful operation on the plaintiff. The plaintiff refused to allow defendant or his experts to examine the affected part, so defendant made application to the court for an order requiring the plaintiff to submit to a physical examination. The court granted the order because the evidence was necessary to settle the question of fact. Subsequent cases in New York take a different view of the power to grant the order and hold that the defendant has no right to demand a physical examination and that the existence of the power "is not indispensable to the due administration of justice," and "its exercise, depending on the discretion of the judge, would be subject to great abuse." In *McQuigan v. Delaware, &c., Co.*, 129 N. Y., 50, the court denied the application of the defendant for an examination of plaintiff's injuries, and said: "We think the assumption by the court of this jurisdiction, in the absence of statutory authority, would be an arbitrary extension of its powers (since the common law did not recognize the existence of the power.)"

The Supreme court of Missouri, in 1873, in *Loyd v. Hannibal, &c., Rd.*, 53 Mo., 509, took the same view of this power to grant personal inspection as the later New York courts; but since then, in 1888, the court, in *Owens v. K. C., &c. Ry.*, 95 Mo., 169, has held that the power to grant the order is one of discretion in the trial court, and that the order will not be disturbed unless an abuse is shown. The Supreme court of Illinois in 1882 took a similar view to that expressed in the early Missouri case, and this view seems to be the one entertained by

that court today, though its decisions are leaning more and more toward leaving the granting of the power to the discretion of the trial court. In the United States courts the rule is that the power to grant physical examination in a personal injury action does not exist at all and the defendant has no right to ask for the examination.

With these few exceptions the state courts are generally taking a different view of the power to grant this order of physical examination, and in a proper case the practice now is to grant the order upon the application of the defendant. The granting of the order is left entirely to the sound discretion of the court, for the defendant cannot in any case demand the examination as a matter of right.

A leading case favorable to the granting of this order is that of *Alabama Great Southern Ry. v. Hill*, 90 Ala., 71, where the plaintiff was injured in a railway accident. She claimed that her injuries were "internal and permanent in their nature, and very grievous, painful and dangerous." Her physician had several times made examination of her person and was ready to testify in her behalf as to the results of his investigation. Prior to the trial, on the day the trial was entered upon, and again pending the trial, after the plaintiff and her physician had testified, the defendant moved the court for an order requiring plaintiff to submit to a physical examination by a reputable physician, to be appointed and controlled by the court. He also presented affidavits of three physicians that the proposed examination would not injure plaintiff, while plaintiff presented two affidavits that it would be dangerous to her health and feelings. On this showing the trial court refused to grant the order each time the motion was made. The Supreme court considered all the facts and held that the lower court erred in denying the order. It said the "delicacy and refinement of feeling, though, of course, entitling her to the most considerate and tender treatment consistent with the rights of others, cannot be permitted to stand between the defendant and a legitimate defense against her claim. When it becomes a question of possible violence to the refined and delicate feelings of the plaintiff on the one hand and possible injustice to the defendant on the other, the law cannot hesitate; justice must be done." A serious doubt was raised by the conclusions of the plaintiff's physician and those of the other physicians who were examined as to what the facts really were, so that to a satisfactory solution of that doubt the examination moved for was essential to do justice. "The result of such examination by skilled and disin-

interested surgeons, under the direction of the court, would necessarily have been either to put the plaintiff's claim in this regard on impregnable ground, or to have destroyed it altogether; and in either case there would have been an unquestionable assurance that justice had been done."

From this case we have a clear statement of the rule and the reasons for granting it in the personal injury case. It can be summed up thus: "That trial courts have the power to order the surgical examination by experts of the person of a plaintiff who is seeking a recovery for physical injuries; that the defendant has no absolute right to have an order made to that end and executed, but that the motion therefor is addressed to the sound discretion of the court; that the exercise of that discretion will be reviewed on appeal, and corrected in case of abuse; that the examination should be ordered and had under the direction and control of the court, whenever it fairly appears that the ends of justice require the disclosure or more certain ascertainment of facts which can only be brought to light or fully elucidated by such an examination, and that the examination may be made without danger to plaintiff's life or health, and without the infliction of serious pain; that the refusal of the motion, where the circumstances present a reasonably clear case for the examination under the rule last stated, is such an abuse of the discretion lodged in the trial court as will operate a reversal of the judgment in plaintiff's favor."

This is the rule as we have it now in the majority of the states. The courts in Arkansas, Georgia, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Ohio, Pennsylvania, Washington and Wisconsin have expressly upheld this practice. Nebraska courts stand in doubt, though they recognize that it is within the power of the court to grant the order in a proper case. However, no opinion actually deciding the question has been handed down by that court.

Many of these cases uphold this rule for granting the order for physical examination upon the ground that when a person appeals to a sovereign for justice he impliedly consents to the doing of justice to the other party and impliedly agrees in advance to make any disclosure which is necessary in order that justice may be done. This reasoning was applied in a case decided by the Supreme court of Michigan in 1893—*Graves v. City of Battle Creek*, 95 Mich., 266. Other courts permit the examination because if the plaintiff can exhibit his injuries to the jury for the purpose of determining their nature and extent, he should, in a proper case and under proper circumstances, be

required to do the same thing for a like purpose upon the request of the other party.

There is no doubt that in any jurisdiction the plaintiff has the right to exhibit his injuries to the jury or to his own physicians who testify as to the facts found, and when those facts are discernable only by physical examination, it seems that in justice and good equity to the defendant he ought to be allowed to require the plaintiff to submit to examination for the purpose of enlightening the jury, the court and himself. Otherwise the facts are altogether one-sided and justice cannot be done.

One or two states have passed statutes which provide for authority to compel a plaintiff in a personal injury case to submit to a physical examination where necessary in the discretion of the court, as in New Jersey—act of May 12, 1896, and in New York, acts of 1893, ch. 298. A case in New York—*Lyon v. Manhattan R. Co.*, 142 N. Y. 298, holds that under this statute the court cannot order a physical examination independently of an examination of the plaintiff as a witness before trial. That is, the defendant, applying for an order for physical examination of plaintiff prior to the trial of the case, must also examine him orally, by way of deposition. This is frequently done in many states today. The defendant desires to know in advance of the trial what the plaintiff will testify to, so he takes his deposition, which is read at the trial. In New York state the physical examination to be available to the defendant before trial must be made in connection with his deposition. Generally, however, the examination is allowed prior to the trial, upon a proper showing as to its necessity, the reason among others being that if the defendant is required to wait until the trial is proceeding before he can get his order for physical examination, the trial will be delayed just that much. This delay most courts seek to avoid, because the presence of an impatient, perhaps sleepy jury, requires speed in the conduct of a case, and nothing tends to encourage lack of attention on their part more than delay.

The plaintiff can, of course, display his injuries to the jury or his own experts without the consent of the court, unless common decency would prevent, and should he consent to the examination by defendant's physicians the court's consent or approval does not have to be first had within the same limits of decency and good morals. Should he refuse to consent to examination by defendant's physicians the order of court must then be obtained. If that order is denied for reason by the court in those states where physical examination may be granted, the defendant has no recourse except to appeal to the

higher court and attempt to get the ruling reversed. If the order can not be obtained at all, because the court is one of those which refuses to grant an order of inspection at all, in case of plaintiff's unreasonable refusal to be examined, then the only thing for the defendant to do is for counsel to make the most of that refusal before the jury, and they will be warranted in considering that fact as bearing upon plaintiff's good faith, as in any other case of the party declining to produce the best evidence in his power.

In the malpractice case the value of the exercise of this power to grant the request of the physician for an order to submit to examination for the purpose of showing the real injury, is exceedingly great. The patient often times submits to the examination without objection, but in many cases he does not dare to willingly do so. The court must compel him to submit his person for such purposes. Should he then refuse, the court can dismiss the action or refuse to allow plaintiff to give evidence to establish the injury.

The power to grant this order for physical examination in a personal injury case is, therefore, one of American origin. The advancement in civilization and society has compelled the law to take forward steps to keep pace with it. No more useful advancement could be made for the defending litigant in a personal injury case, and particularly for the physician who is subject more than any other man to blackmailers who seek to malign his professional reputation than to compel the patient to submit to examination whenever the justice of the case demands it. The field is broad, but the rule is far reaching and ought to be made so much so that blackmailers will cease their nefarious schemes to gain their living.

AN ENGLISH PHYSICIAN'S EXPERIENCE AT THE MADRID CONGRESS.

The correspondent of the British Medical Journal for May 9th humorously relates his experience with his landlady, when leaving Madrid, as follows:

"Then came the question of paying. I had arrived there on Thursday afternoon, and I left on Monday afternoon, and this, at ten pesetas a day, made, according to my calculation, forty pesetas. I therefore laid eight new silver cart-wheel pieces of five pesetas on the table. These she counted over, and then claimed ten pesetas more, insisting that from Thursday to Monday was five days. She affirmed that I should not leave her

house until I paid what she demanded, and rushing off to the main door of her flat she shut and bolted it, and stood with her back against it. It was necessary for me, therefore, to carry her away from the door before I could open it and escape with my portmanteau. With the help of a messenger the portmanteau was then put on the box of an open cab. The lady having disappeared, I thought that I was all right, and I told the cochero to drive to the Estacion del Norte. But before we were under way the lady reappeared with a policeman, and practically gave me in charge for attempting to defraud her!

"The Calle Montera leads down into the Puerta del Sol, a splendid open space about four times the size of Piccadilly Circus, and as the lady kept on accusing me and gesticulating, a crowd was collecting. Then two more policemen arrived and stood over me as I sat in the victoria. They asked me for my version of the affair and I told them I had agreed to pay the lady ten pesetas a day for a small room, and I ended by saying, 'Aun he pagado demasiado, y no pagare mas!' (I do not quote this as classical Spanish; I merely repeat what I kept saying to the police—I had already paid her too much and I did not intend to pay her any more.) By this time the lower end of the Calle Montera was chokefull of people who were interesting themselves in the altercation, and a crowd was beginning to surge up from the Puerta del Sol. The electric tram-line was blocked, and all traffic rendered absolutely impossible. I never saw a crowd collect so quickly, and I certainly never occupied so central a position in one.

"In the height of all this excitement a gentleman wearing the Congress badge came up to me and asked me if I were an Englishman. He assured me that he was immensely amused at the scene, and, having heard my story, told me that his landlady had done him out of 100 pesetas. I then asked him to beg the cabman to try his best to hurry away; but he replied he could not do this, as he did not know the Spanish word for hurry. However, it did not matter, for so anxious had I been to leave my miserable lodging that I had ordered the cab two hours before it was wanted, and 'I had all the time,' as the French say. Eventually, perhaps because it was the simplest and the easiest way of clearing the street for traffic, the police allowed me to go, and as I left I saw the lady still holding out that handful of new silver, and violently gesticulating against what she pretended to think was deliberate fraud. As the crowd made way for me I waved them a triumphant, and, I hope, graceful adios, thankful to have got away."



Medico-Legal Bulletin.



PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. II

OCTOBER 1903

No. 1

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

\$1.00 Per Annum

SUBSCRIPTION RATES

Single Copies 15c

ADVERTISING RATES FURNISHED UPON APPLICATION. Non-ethical advertisements will not be received, the publishers reserving the right to reject and discontinue any advertisement at any time.

THE PHYSICIANS DEFENSE COMPANY LEGALLY QUALIFIED IN THE STATE OF MINNESOTA.

INSURANCE COMMISSIONER DEARTH OVERRULED BY W. B. DOUGLASS, ATTORNEY GENERAL.

In 1901 The Physicians Guarantee Company, now known as the Physicians Defense Company, applied to the secretary of state for a certificate of authority admitting and qualifying the company as a foreign corporation to do business in the state of Minnesota. Upon filing its papers and paying the required fees, the company was admitted and the secretary's certificate issued.

The company placed a number of agents in the state introducing its plan and proposition to the medical profession, which being an ethical one and the only one which considered the physicians' reputation of first importance, met with the ready support of the profession. A large number of contract holders were secured throughout the state, especially in the cities of St. Paul and Minneapolis.

Certain casualty companies were at this time introducing to the medical profession what they were pleased to term physicians' liability policies, which professed to indemnify as well as defend civil prosecutions for malpractice. As the agents of

this company were unsuccessful in securing business in competition with representatives of the Physicians Guarantee Company, they pursued similar underhanded tactics to those tried in other states. They brought the matter to the attention of the insurance department and received from the commissioner a ruling to the effect that the Physicians Guarantee Company had not complied with the insurance laws of Minnesota and for this reason was illegally doing business in that state, and threatened the arrest of our representative under the insurance laws.

The company took up the matter with Commissioner Dearth, presenting to him the facts that the company was incorporated under the Voluntary Association acts of the state of Indiana; that it was not incorporated as an insurance company in its home state; that it was not considered as doing an insurance business by the insurance department of any state except Minnesota, producing rulings of the various commissioners to this effect; demonstrating that its contract was one for services and not one for indemnity; that it had complied with the foreign corporation laws and had been admitted as such by the secretary of the state of Minnesota; for all of which reasons his ruling was erroneous, arbitrary and unjust. The commissioner was deaf to all argument and reason, and arbitrarily maintained his position. The company then sought legal redress and planned to bring, as it had done in other states, a mandamus action against the department. Upon consultation with its attorneys in Minnesota, O'Brien & O'Brien, of St. Paul, and, after careful examination of the statutes, it was ascertained that Minnesota occupied the unique position of having a law which prohibited bringing a mandamus action against any state official. Under these conditions the company was placed in an embarrassing position, for the only manner in which the matter could be brought to the attention of the courts was to have a representative arrested by the insurance department and prosecuted for violating the insurance laws. This the company hesitated to do, for the reason that it might be some time before a decision could be obtained from a higher court, and during the interval our competitors would use the fact in attempting to secure our contract holders as patrons of their own companies.

In the meantime the Physicians Guarantee company was re-incorporated under the name of the Physicians Defense Company, with absolutely no change in its organization so far as its right to do business as a foreign corporation was concerned. The management of the new company decided to contest the ruling of Insurance Commissioner Dearth, and for this purpose

sent a special representative to St. Paul. The company's representative and attorneys called on the commissioner and explained that if he still persisted in his unjust and arbitrary ruling, that we desired to make a test case of the matter, and that our representative was here for the purpose of being arrested. When the commissioner found that the company did not propose to longer submit to his prejudiced opinion, he referred the matter to the attorney general, Hon. W. B. Douglass. The attorney general, after giving the company's Articles of Incorporation and Contract for Defense careful investigation, rendered a written opinion to the insurance commissioner to the effect that:

"This corporation is not an insurance company under the definition of insurance adopted by the legislature of Minnesota, and the company is not required, as a basis for doing business in Minnesota, to obtain a license from your department. The rule is well settled in this state that the nature of the corporation must be determined from its articles of incorporation. The power of the Physicians Defense Company may be found in that portion of article two, which reads as follows:

" 'The association shall issue to physicians and surgeons for stated and agreed compensation, contracts by which it will undertake and agree to defend the holder of the contract at its own expense, against any action brought against him for damages for alleged malpractice in relation to or connection with services performed, or which should have been performed within the time covered by the contract. But the Association shall not in any defense contract issued by it assume or pay any judgment for damages for malpractice rendered against the holder of such contract.'

"The terms of the contract enclosed are consistent with the powers in the articles quoted. In brief, the company agrees, in consideration of a certain sum, to furnish its attorney and also employ a local attorney, in whose selection the holder shall have a choice, and defend any civil action which may be brought against him during the specified time. The contract expressly provides that the company does not obligate itself to pay any judgment which may be rendered against such holder, or the amount of any damage which he may, as a physician, inflict. In brief, the company is empowered to and does enter into contract with physicians of this state to furnish them and pay for the services of an at-

torney in actions of malpractice which may be instituted. In my judgment this does not make it an insurance company within the definition adopted by our Legislature, which has defined a contract of insurance, as follows:

“‘An agreement by which one party, for a consideration, promises to pay money or its equivalent, or to do some act of value to the assured upon the destruction or injury of something in which the other party has an interest.’

“This is universally construed as an agreement to reimburse the assured for damages resulting from the destruction of or injury to his property. A foreign corporation undertaking to do an insurance business as thus defined is required to take out a license therefor. It seems to me clear that an agreement of the company under consideration to hire an attorney to defend a civil action, or if necessary, pay the expenses of possible litigation, cannot be deemed to be an agreement to reimburse or pay damages arising from the destruction of or injury to a person's property. Regretting that I am unable to concur in the opinion of your department, I am,

“Very truly yours,

W. B. Douglass.”

Upon receipt of this opinion from the attorney general the insurance commissioner wrote the attorneys of the Physicians Defense Company, enclosing a copy of the same. A fac simile of the insurance commissioner's letter and of the secretary of state's certificate will be found on pages 405 and 406.

From the foregoing it can be seen that the Physicians Defense Company is lawfully qualified and has been legally admitted to do business in the state of Minnesota in the issuance of physicians' defense contracts, for the defense of physicians and surgeons in civil prosecutions for malpractice. While we are on this subject, let us look for a moment as to the legality of the physicians' liability policies under the laws of Minnesota, as issued by the casualty companies.

March 1, 1900, Insurance Commissioner Dearth wrote to the Physicians Guarantee Company relative to its application to do business in Minnesota:

“I am obliged to state to you that the state laws authorize certain kinds of insurance as the proper and legal subjects of insurance, and the business you are transacting is an insurance business not authorized by the law of this state, but, on the contrary, in general terms, prohibited. Therefore I would not be in position

to consider the admission of your company to transact this kind of business. In brief, you can do no business in Minnesota without first being legally authorized by this department, and the law would not allow this department to so authorize you."

(It should be born in mind that at this time the company contemplated paying the judgment.)

On October 22, 1901, Insurance Commissioner Dearth wrote Dr. F. McGuire, St. Cloud, Minn., as follows:

"I am in receipt of your favor bearing date of the 20th inst., referring to the matter of the writing of so-called physicians' and surgeons' insurance by the Fidelity and Casualty Company, of New York, and the Travelers' Insurance Company, of Hartford, Conn., in which you raise the point as to the legality of such a contract, both as regards the laws of this state and the charters of the respective companies named. I was not before aware of the fact that said companies were writing this class of business, and upon referring to their charters, I am very much in doubt as to the same covering this class of risks, and in any event, am equally as much in doubt as to their right under the laws of Minnesota to assume such liability. Inasmuch as the matter has been brought to my attention, I shall take same up and give it very careful consideration. On the face of it, it appears to me that such a contract is really against public policy, as it will serve as an excuse, or at least may be the result of carelessness on the part of physicians in connection with their practice, but without having given the matter due consideration, which I shall certainly do, such a contract does not appear to be covered by the insurance laws of our state. Thanking you for calling this matter to my attention, and assuring you that the same will receive my prompt and careful consideration, I remain,

"Yours very truly, Elmer H. Dearth."

From the foregoing it will be seen that the casualty companies who are issuing in the state of Minnesota what is known as physicians' liability policies, are doing so without first bringing the matter to the attention of the insurance commissioner, from whose department alone can be secured authority to transact business of insurance. Furthermore, that the commissioner holds that the indemnity of the physicians in actions for civil malpractice, is against public policy; that the law does not authorize insurance of this character, but is on the contrary, in general terms, prohibited.



ELMER H. DEARTH
COMMISSIONER

St Paul Sept. 11, 1903.

C. D. O'Brien, Counsel,

Physicians' Defense Company of Fort Wayne, Ind.,
--Globe Building--
St. Paul. Minn.

Dear Sir:-

I have received from Attorney General Douglas an opinion on the question, as to whether or not the contract issued by the Physicians' Defense Company--which for the consideration of a certain annual payment agrees to defend the holder of the contract at its own expense in any action brought against him for damages for alleged malpractice, etc.--involves the business of insurance as defined under the statutes of Minnesota, in which he (Attorney General) holds that said contract is not that of insurance as defined by the statutes and, consequently, said company will not be required to obtain a license from the Insurance Commissioner as a prerequisite for the transaction of business in this State, as set forth in its articles of incorporation.

While this does not sustain the opinion entertained and expressed by the writer, at the same time I cannot do less than accept as final the Attorney General's construction placed upon the business of said company in its relation to the general insurance statutes as construed or interpreted by him; therefore, you will please advise your clients accordingly.

Enclosed, I duly submit copy of the aforesaid opinion, which you will find self-explanatory.

Yours very truly,

Elmer H. Dearth
Insurance Commissioner.



Be it known that Physicians Defense Company, a foreign corporation located at Fort Wayne, State of Indiana has complied with the provisions of Chapter Sixty-nine (69) of the General Laws of Eighteen hundred and ninety nine (1899), by filing in this office a duly authenticated copy of Articles of Incorporation, a sworn statement showing amount of capital stock, and proportion of capital stock represented by its located property and business transacted in this State and appointment of resident agent.

The capital stock of the said Physicians Defense Company is One Hundred Thousand Dollars, and the proportion thereof represented in this State is Dollars.

Now, therefore, I, P. E. Hanson, Secretary of State of Minnesota, do hereby certify that said Physicians Defense Company has duly complied with the laws of this State and is authorized to do business herein, with all the powers, rights and privileges and subject to the limitations, duties and restrictions which by law appertain thereto, for the period of Thirty years.



Witness my official signature, hereunto subscribed, and the seal of the State of Minnesota, hereunto affixed, this twenty seventh day of August in the year of our Lord one thousand nine hundred and three.

P. E. Hanson
Secretary of State

MEDICAL PRACTICE IN HONG KONG.

It is stated that the practice of medicine in Hong Kong is a singular combination of Chinese and British institutions. Two medical concerns do nearly all the business, on annual contract. Each head of a family, or of a business house, contracts for medical attendance at so much a year. Heads of business houses explain that it is a matter of policy with them to have their clerical force feel that medical advice and attendance are free; the warfare against tropical diseases must be so constant that any symptoms no matter how slight, should receive early attention. The physicians who serve these firms do so under term-contracts, each signing an agreement not to practice within twenty miles of the firm's headquarters on the expiration of the contract period.—American Medical Magazine.

Judicial Decisions.



Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

HOLDING OF POST MORTEM WITHOUT NOTICE TO COMPANY.

In the case of Loesch vs. the Union Casualty and Surety Company, an action brought on an accident policy by a mother to recover for the death of a son insured for her benefit, the Supreme court of Missouri, Division No. 1, says that, on the day after the son's death the physician in attendance told the mother that he desired to hold a post mortem examination, to which she assented, or, at least, made no objection. He called in some other physicians to assist him, and they made a post mortem examination. After it was done, and the body was sewed up, the physicians came out of the room, and then the mother handed the attending physician the policy in suit, and asked him what she should do in regard to it. He examined it, and discovered a clause declaring that, if a post mortem be held without notice to the company in time to have its medical adviser present, all claims under the policy should be forfeited. He went immediately to the office of the company, and notified them of what had occurred, and on behalf of the mother offered to hold another post mortem with their medical adviser if they so desired. But they expressed no such desire, and the mother, after holding the body until the next day, caused it to be buried. The court says that it is satisfied that the holding of the post mortem examination without notice to the company, under the circumstances shown by the evidence in this case, did not have the effect to forfeit the mother's rights under the policy. A clause of forfeiture is not to be strictly construed in favor of the company in such case. On the contrary, whilst it should be given a reasonable interpretation, yet the inclination of the court should be against the forfeiture. The design of this clause in the policy was to enable the company to learn the cause of the death of the insured, as that cause might be shown by a post mortem

examination, if one should be held. Whatever such an examination might show, the company was entitled to an opportunity to know. It is a reasonable requirement under reasonable interpretation, and a violation of its terms under circumstances reasonably showing disadvantage to the company which would work a forfeiture of the policy. But there was nothing in this case to indicate any such disadvantage. In the first place, it was very doubtful if the mother was responsible for the act. If it occurred without her knowledge or consent, it would be no defense to the suit. She testified that she did not know what the word meant, and did not know what the physicians were doing. But, however that might be, as soon as the attending physician saw the policy and read this clause, which was immediately after the post mortem had been held, he went to the office of the company, and informed them what had been done, and offered to allow them to make a re-examination, as before stated. There was no suggestion in the record of any fact or theory which would tend to show that a re-examination of the body at that time would not disclose to the eye of the company's surgeon everything that the first disclosed to the physician who made it. The court does not say that the first examination might not have disclosed facts that could have been hidden from one making a second examination; but there was no such suggestion in this record, and it was not led, therefore, into such an inquiry. Wherefore, the court holds that the fact that the post mortem examination was held without notice to the company was no bar to the mother's action under the circumstances disclosed by the evidence in this case.

WHAT IS AN ACCIDENT?

A recent judgment of the House of Lords decides a point of considerable practical importance to the community in general, and also of considerable interest to the medical profession. A man in the discharge of a duty which necessitated the employment of force acquired a hernia, and sued his employer under the Workmen's Compensation Act. The defendants contended that the plaintiff had not sustained injuries through an accident within the meaning of the act, and this view was upheld by the County court judge, who was in turn supported by the Court of Appeal. The House of Lords has, however, taken another view; reversed the decision of the inferior courts, and awarded the man the compensation for which he sought. The point to be decided is a knotty one, and one which, as apparently the courts

found, affords scope for considerable differences of opinion. Whatever may be the legal interpretation of the words of the act, in our opinion the acquisition of a hernia should not be deemed to be an injury the result of an accident, inasmuch as to permit of its occurrence there must have been some previous pathological condition. A healthy man, in whom the various possible hernial tracks are properly closed, cannot to our mind acquire a hernia from some slight exertion. If he can, who would be found who did not have one? Suppose a man ruptures a gastric ulcer whilst discharging his duty, is that an accident within the meaning of the act? If it is, where is the definition of an accident to stop? If it is not, why should a distinction be made in the case of the rupture of some already overstretched band of fascial fibre that permits an intestine to leave the peritoneal cavity. Reasoning by analogy is notoriously unreliable, but it cannot for that reason be altogether neglected. To our mind injuries should only be considered as the direct result of an accident, for the purposes of the act, when they occur independently of any previous pathological condition. The Workman's Compensation Act is altogether a curious anomaly. In the first instance it inaugurated the absurd system of compensating a man for the consequences or risks he voluntarily undertook, and for the result of carelessness. It now undertakes to further compensate him for injuries the result of previous bodily deformities or ill health. Such acts will eventually injure the class they are intended to benefit. We are informed that in many parts of Great Britain at present, the moment a workman shows signs of ill health or advancing age he is dismissed, and replaced by a younger man, not because he is unable to do his work, but for fear of the consequences of the Workman's Compensation Act.—Med. Press and Circular.

MULES TOO VALUABLE TO BE VACCINATED.

The firm of J. F. Cheers & Sons, of Winchester, Ark., sued the Mann Drug Company, of Pine Bluff, Ark. for the value of eight mules over \$800 which they claim died after being vaccinated with pure vaccine points sold them through the drug company, by Parke, Davis & Co., of Detroit. The plea was made that Parke, Davis & Co. claimed to be able to prevent charbon by vaccination—true anthrax or malignant pustule—for which mules were treated with such fatal results. The jury returned a verdict for the plaintiffs for \$512.50.—Exchange.

CAMPAIGN AGAINST CHARLATANS IN GERMANY.

The German Imperial government has notified the various state authorities that more energetic measures must be taken against quacks. The official circular states that the number of charlatans has enormously increased during the last decades, and quack practices have assumed such proportions as to become a serious menace to the public welfare, equally detrimental to the interests of the public and to those of the medical profession. The circular reviews the various measures that have been enforced in Prussia, registration of unqualified, so-called healers, the prohibition of extravagant promises to cure and prosecution of charlatans for illegal practices, and remarks that these measures have not proved an effectual check. Consequently, it is proposed, in the interests of the public, to confer further powers on the local authorities to enable them to put an end to such practices in the future, at least in the cases in which the charlatans have already done injury to the life or health of the patients who have applied to them, and in those cases in which from the antecedents of the charlatan or his personality, attempts to fleece the public may be feared. In such cases the local authorities are empowered to prohibit the quack from practicing further. The law against fraud in business is to be extended to cover illegal practice of the healing art. The official circular is quoted in full in all our German exchanges as an important advance in the campaign against charlatans which the medical profession has been waging. A cable report states that these professed curers will be given a month to secure other employment, after which time they will be prosecuted if they persist in practice. One newspaper correspondent cables that the government is in possession of statistics which show that more than 100,000 men and women are illegally practicing medicine and the art of healing in Germany, and that this number is rapidly increasing. One medical statistician says he has found 150 cases of cancer in his province. Of these 25 are attended by authorized physicians and 108 by quacks. He maintains it is nearly as bad in other diseases which particularly call for trained medical aid. Most of these quacks allege that they have occult powers, personal magnetism, "magnetic eyes and hands," and that a cure will be the immediate consequence of implicit reliance on this

treatment. In some of the large cities of Saxony, Dresden, Leipzig and Chemnitz, it is not unusual for an ignorant quack to receive from \$1,500 to \$2,000 a year, an income beyond the average earnings of the scientifically equipped medical man throughout Germany. Attention is also directed to the number of women quacks who profess to have magnetic powers. In Saxony alone there are several hundred, and among their patients are some of the proudest names in the land.

The authorities of Berlin and its province are publishing the following circular of warning for the public, drawn up by a committee appointed by the Berlin Medical Chamber: "While physicians thoroughly trained and approved by the state disdain to advertise their services, there are numbers of other persons who have no training or special knowledge who yet seek to delude the suffering public by advertising in the papers, or distributing circulars or by worthless books in the hands of agents, assuming false titles, making baseless promises and publishing forged or bought or fraudulent testimonials. The immense sums paid out for this advertising demonstrate the large profits that are made out of this business. During the eight years ending 1897 there were 177 criminal suits against these charlatans on account of severe injury or death from their practices, and the total resulting imprisonment amounted to 63 years, 3 months and one day. The legislature assumes that the public is enlightened enough to protect itself against such swindling speculation on the credulity of the sick. The public should apply the ordinary prudence customary in business transactions to matters affecting health and even life itself! The title of physician alone guarantees that the bearer has been found fully qualified by the state. All other titles should be regarded with mistrust. All published testimonials should likewise be mistrusted unless the person signing the testimonial is personally known and personal inquiry has been made.'—J. A. M. A.

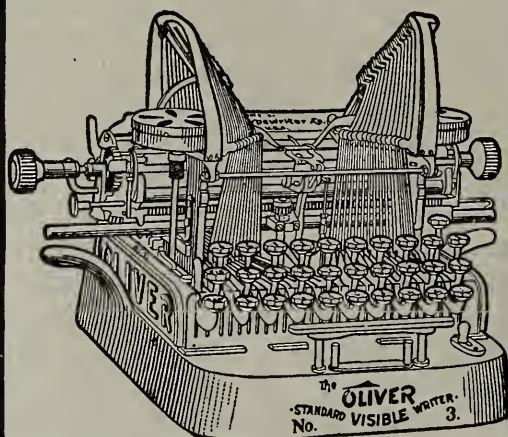
ESTATE LIABLE FOR MAINTENANCE OF INSANE.

By a recent decision of the court, the public administrator and an estate of which he had charge were ordered to pay a goodly sum to the city of St. Louis for board, the owner of the estate having been for a long period confined in the insane asylum. Payment was for a time denied on the ground that the asylum was a charitable institution, but the court decided the debt was a just one if the individual or his estate was able to pay.

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Medico-Legal Bulletin.



ORIGINAL ARTICLES

Statute of Limitations in Malpractice Actions.

An important plea often made use of in the malpractice action is that of the statute of limitations. If the plea holds good, the action is barred, great expense and time are saved and the case is forever dismissed from further prosecution. What this statute is and the application of its provisions to the malpractice action is the subject before us for brief consideration.

The word "limitation" as it is used in this connection, means the time which is prescribed by the authority of the law, at the end of which no action at law can be maintained. By the Roman law this term appears under the title of "prescription," from the term "prescribo," which expresses the meaning of the word "limit" in the sense we are using it here. The title "prescription," however, has existed in some form, and under some name, as a part of the municipal law of every civilized nation with the exception of the Jewish. The Jewish law provided that all lands not in possession of the true owner should be returned to him at the jubilee. The law of Athens, on the other hand, says Angell, contained a general prohibition of all actions, where the injury had been committed six years before the complaint was made. The Twelve Tables of Rome limited the recovery of possession of land to two years, and the more advanced Roman law modified this provision to three years for certain movable property, and to ten and twenty years for immovable property, such as the land itself. Through all the modifications which this celebrated law has from time to time received and in all the varied forms in which it has been administered to

the modern nations of continental Europe, some term of time has been invariably observed, as the limit at the end of which a party shall, in all cases, be completely exonerated from all judicial interference.

Coming to the British Isles we find that in 1469 the Scottish government, which used the civil law, established a negative prescription for simple obligations, which became considerably extended by practice, until finally in 1617 heritable bonds and other heritable rights were included. By the act of 1579 book accounts were limited to three years, but no limitation upon bills and notes was fixed in Scotland until the twelfth year of the reign of George III., when an act was passed providing a limitation of six years.

In England, and the history of limitation of actions at law in our own country is intimately connected with that of England, there was no limitation to any action until the various acts of parliament prescribed certain limits within which to bring the action. Undoubtedly, however, at an early period in that country, the heir of the tenant had a limited time—a year and a day—in which to claim after the death of his ancestor, and if he did not present his claim within that time, he was without remedy. Another ancient doctrine was that of the fines. The fine is an agreement or composition of a suit, actual or fictitious, by leave of the court, by which the lands in question become, or are acknowledged to be, the right of one of the parties. It put an end not only to the suit thus commenced, but also to all other suits or controversies over the same subject matter. The fines thus made were regulated by statute in the time of Henry VII. and put an end to all controversies and suits after five years. More modern acts of limitations are somewhat analogous to this doctrine, as in the early New York statute, where five years was allowed for claiming against a fine.

There were all sorts of periods of time fixed upon in the early acts of parliament for various actions. Some limited certain actions to the time of the reign of a certain king, or to

the last return of King John from Ireland, or to the first coronation of Richard I. The latter statute—1 and 2 Westminster—caused many suits, troubles and inconveniences to arise, and, “therefore,” says Lord Coke, “a more direct and commodious course was taken which was to endure forever, and calculated so to impose diligence on, and vigilance in, him that was to bring his action, so that by one common law certain limitations might serve, both for the time present and for all times to come.” The first statute to follow this course was that of 32, Henry VIII., in 1540, and some years after the more comprehensive statute of 21, James I., entitled, “An Act for Limitations of Actions and for Avoiding of Suits at Law,” followed. This latter statute is the first positive enactment in England which provided a limitation to an action upon contract or for personal injury, as the House of Lords said in a case in 13 East Reports, that at common law the plaintiff might have sued at any time and that there was an unlimited right of suit until restrained by this statute.

The colonial states generally adopted this statute and it formed the basis of the present statutes of limitations in the various states today. Any difference that exists in any of the states between the provisions of that statute in respect to personal actions is more in words than in substance. The state statutes are either an exact transcript of the statute of James I., or a revision or modification of it. The section which refers to personal actions is as follows:

“And be it further enacted, that all actions of trespass quare clausum fregit, all actions of trespass, detinue, action, sur trover, and replevin for taking away of goods and cattle, all actions of account, and upon the case, other than such accounts as concern the trade of merchandise between merchant and merchant their factors or servants, all actions of debt grounded upon any lending or contract without specialty; all actions of debt for arrearages of rent, and all actions of assault, menace, battery, wounding, and imprisonment, or any of them, which shall be sued or brought at any time after the

end of this present session of Parliament, shall be commenced and sued within the time and limitation hereafter expressed, and not after; (that is to say, the said actions upon the case other than for slander), and the said actions for account, and the said actions for trespass, debt, detinue, and replevin for goods or cattle, and the said action of trespass quare clausum fregit, within three years next after the end of this present session of Parliament, or within six years next after the cause of such actions or suit, and not after; and the said actions of trespass, of assault, battery, wounding, imprisonment, or any of them, within one year next after the end of this present session of Parliament, or within four years next after the cause of such actions or suit, and not after; and the said action upon the case for words, within one year after the end of this present session of Parliament, or within two years next after the words spoken, and not after."

The personal injury action would come in under the term "actions upon the case," for that is the common law form used for such a suit. It is used today in a few of the states which have not adopted a code of civil procedure.

The reason for the creation of this statute is that public policy demands that the "dominion of things must not for a long time remain uncertain, so as to disturb the peace of society by giving rise to innumerable and perpetual litigations; and that, to prevent such serious evil, the indolence of those who are dilatory in recovering their property, and claiming what is due them, should be punished, and that those who are indolent shall impute to themselves the punishment." It has oftentimes been said that the statute of limitations is one of the wisest laws ever enacted. It certainly tends to the peace and welfare of society to have such a statute, particularly when a person has received an injury through the alleged negligence of another. If there were no limit placed upon the bringing of an action to recover damages for an injury resulting from negligence, great injustice would be done to the defendant. The suit might be brought long after the occurrence of the negligence, and in the meantime defendant may lose important evidence by death of a witness or destruction of data, so that he could not make the defense he otherwise would have made had the suit been brought within a reasonable time after the negligence occurred. To allow such a situation to exist is clearly against the policy of

the law, and to protect the public and give it a safeguard against the possibility of fraud and oppression, is the fundamental reason and spirit for the creation of the statute of limitations.

Now the various states of this country have each a statute of limitations covering, among other things, the limitation of actions for personal injuries and breach of express or implied contract. The periods of time vary in the statutes from six to ten years for the contract action, and from one to six years for the personal injury or tort action. The courts have construed these statutes liberally and have not permitted them to be "frittered away by judicial refinements and subtle exceptions that never entered into the contemplation of its enlightened framers." They have put upon the statutes the plain construction which their words impart, and they do not give them a strained or strict construction unless there is ambiguity in the terms. The courts hold that the statute of limitations is not retrospective, but is applied only to a right of action which is to commence in the future. They hold that the lapse of the time prescribed by the statute amounts to the evidence of the performance of the contract or the settlement of the claim of damages and not the destruction of the right to sue; that is, the statute destroys the remedy but not the right. The plaintiff still has his right, but he has no means of enforcing it. The result is the same, however, for he is estopped from using the courts of law to recompense his damage.

Actions for personal injury and for breach of contract occupy a large portion of the time of our state courts, because the plaintiffs who have nothing to lose are willing to take their chances on a verdict by a jury whose sympathies they can arouse in their behalf. Among these actions none is more subject to this sort of prosecution than the suit for malpractice. It being both an action for a tort quasi ex contractu—for malfeasance, or bad conduct; misfeasance, or doing an act in an improper manner; or nonfeasance, or not doing what should have been done, resulting in personal injury, and an action for breach of contract, according to the nature of the pleading, which the plaintiff files, the statute of limitations has peculiar importance in barring the remedies sought by the patient. If the plaintiff draws his pleading so that it stands on the tort, the statute referring to actions for injuries to the person controls, and if the pleading is so drawn that it stands on the contract of the physician and the breach thereof, the statute referring to actions on contracts controls. The statute may provide that the action

for personal injuries is barred after a certain number of years, whether it is brought on contract or in tort, as in Iowa; or it may provide that malpractice is barred after a certain period of time, as in New York, Ohio and North Dakota. In the other states of the Union the statute which applies depends upon the wording of the plaintiff's complaint in the particular action, or upon what construction the court has placed upon the malpractice action generally. In most instances, however, the pleading is one of tort, based on the implied contract—tort quasi ex contractu—so we find the statute for injury to the person the controlling one. To set forth what this statute is in each state would occupy too much space, so we refrain from doing so, suffice it to say that the period runs anywhere from one to six years, with a good majority of the states having two years as the limit.

A material question in regard to the operation of the statute of limitations in the malpractice action is: When does it begin to run? This question may be the controlling one in the case and to uphold the defense of the statute the time from which to compute the prescribed limit must be definitely determined.

By the civil law the rule is that prescription only begins to run from the time when the creditor has a full and perfect right to prosecute his demand. This rule extended itself into the laws of Great Britain, and through them into those of the United States. In other words, the time limited by the statute is to be computed from the time at which a creditor or other plaintiff is authorized first to commence a suit. It is apparent that when a party has a right to apply to the court for relief is a question of more or less difficulty, for it depends mainly upon the facts and circumstances of each case. The time the statute has to run makes no difference with its commencement. It is the time when the plaintiff first has the right to sue that controls the operation of the statute.

If a party brings his action for breach of contract the accrual of his right of action, which set the statute to running, occurred when the contract was broken, and not when the damage which the party claims he suffered occurred as a result of that breach. When a party breaks a contract he commits a wrong for which he is liable to the other party to pay, at least, nominal damages—that is, damages in a small amount, as a recognition of his right which has been interfered with. If there is any special damage which the injured party claims as the result of that interference of his right, he must show and prove that it occurred within the statutory period. The same

rule applies to a breach of duty, as, for instance, if an attorney compromises an action contrary to his client's instructions, though he acted in good faith and caused him no actual damage, yet he would be liable to pay his client nominal damages for his breach of duty. If the client, in addition, could show that he suffered actual consequential damage, the attorney would be liable to pay the damages assessed, provided the damage occurred within the statutory period. The breach of the duty set the statute to running and not the consequential damage. And carrying the discussion into the tort actions, we find that the rule is the same. The statute begins to run immediately upon the happening of the wrongful act. If it is an assault and battery, the right of action accrues when the assault and battery occurs; if it is an act of negligence, then the right of action accrues when the negligence occurred. The only exception, however, that can exist is when the cause of action is based on consequential, as distinguished from direct, damages, and involves an act of omission, which might have proved harmless, as where a county is bound to keep a bridge in repair, but constructed it of such poor material that years after a party was injured. The statute in such a case would begin to run when the party was injured, for he had no right of action prior thereto.

The malpractice action being one for an injury to the person as the result of a breach of duty to use care and skill, we would naturally expect to find the same rule applicable to it as to any other personal action. The physician is employed to treat the patient and endeavor to cure him of his illness. The duty he assumes is to possess and exercise ordinary care, skill and diligence. His services are required upon the case until in his best judgment they are no longer needed, or the relation is severed by his discharge by the patient. Should he at any time during his treatment fail to comply with that duty, he renders himself liable to a suit for such breach of duty. The breach may be a failure to diagnose the case properly, or to prescribe the proper remedies, or, in the case of surgery, to set the broken bone properly or give it a proper bandage, or he may expose the patient unnecessarily, or give him improper instructions as to the care of himself, or he may abandon the patient. The breach may be one or more of these acts or omissions, and whenever it occurs a right of action accrues immediately to the patient, whether or no the actual injury has developed, and the statute is thereby set in motion.

In a leading case in the United States Circuit Court for the Southern District of Iowa, *Fadden v. Satterlee*, reported in 43 Fed. Rep., 568, the petition alleges that defendants were called in September 1, 1887, to treat a fractured leg; that they attended plaintiff until November 17, 1887; that they so negligently, unskillfully and carelessly set the bone and dressed and bandaged it that the leg is permanently maimed and deformed to plaintiff's damage. The suit was filed November 16, 1889. Defendants plead the statute of limitations of two years. The plaintiffs contended that the action was not barred by the statute, because the defendants continued their treatment until November 17, 1887. The court held that the alleged unskillfulness, carelessness and negligence inhered in the setting of the fracture and the bandaging of the limb, which was done on the first of September, and that the statute begins to run at the time the injury is received, although its results may not be then fully developed.

The services in this case lasted two and a half months and the court held that if the alleged negligence occurred at all, it happened on the first day, for that was the day upon which the particular service was rendered out of which grew the right of action. The bone was set and dressed and bandaged on that day, and if such service was unskillfully performed, then a right of action accrued immediately, though no damage developed until two years afterward.

Another case, decided last November by the Supreme Court of Ohio, *Gillette v. Tucker*, reported in 65 N. E., 865, hinged on the application of the statute of limitations of one year, in which is included in express terms the action of malpractice. The facts were these: (We go into details more than is necessary for this discussion because the case is interesting.) The plaintiff had a severe pain in her right side and on November 1, 1897, called on defendant, who diagnosed the ailment as appendicitis and recommended an operation, which was had on the next day, at the Toledo hospital. After the abdomen had been opened defendant placed in the cavity a cheesecloth sponge, consisting of seven or eight layers of cloth, two by four inches each, to absorb the liberated blood. The appendix was found to be in normal condition, but indications showed that an examination of the pelvic region was necessary. Defendant closed up the incision, leaving the sponge in the cavity, stitching the peritoneum with kangaroo tendons and the muscles and skin with silkworm gut. No drainage was provided. He then made an

incision in the median line and an hematoma was found. This was removed, the cavity cleansed and closed and the patient put into bed, where she remained for five weeks. About the tenth day she felt a severe pain in her side and a sensation as though the closed incision had bursted. Defendant was called, was told what had occurred, and upon examination found the first incision discharging pus so as to saturate layers of cotton. He attributed the discharge to the stitching tendon and told her it would soon be absorbed and the wound would then heal. She was taken home December 5th, and on several occasions, up to April 15, 1898, he was called to plaintiff's home; the pus was still discharging and he said each time that the tendons would soon run out and the wound heal. On the April visit he probed for the tendons, but was unsuccessful and gave her the same advice and assurance as before. He contends here that he wanted to reopen the wound to find out the cause of the discharge, but plaintiff would not let him, but she would let him probe for the tendons, because to do that he would not have to give her an anaesthetic. The discharge kept up all summer with increasing volume and pain and in November plaintiff called at defendant's office. She told him that the wound was no better and accused him of not "doing his work right." She left his office at his request and came back no more. On April 12, 1899, another physician opened up the wound and found the sponge.

The suit was begun in June, 1899, and defendant plead the statute of limitations of one year in his answer, and contended that the statute was set in motion when the sponge was sewed up in the abdominal cavity. Plaintiff contended that the services continued up to November, 1898, when she was summarily dismissed from his office, and that therefore the statute had not run its full period, but was set in motion when she was dismissed. The Common Pleas Court sustained the plea of the statute and gave an instruction to the jury to return a verdict for the defendant, which was done. Plaintiff appealed to the Circuit Court, which reversed the judgment of the lower court, and defendant appealed to the Supreme Court, which affirmed the judgment of the Circuit Court. The Supreme Court stood three to three on the question, the equal division constituting an affirmance of the Circuit Court. The opinions of the courts, both from the affirming and the dissenting sides, are very carefully drawn, and we will discuss them for a moment.

The decision of the court sustaining the Circuit Court in its view that the action was not barred by the statute, was on the

ground that the injury consisted not so much in leaving the sponge within the cavity as negligently continuing it there, the result being a continuous, increasing, daily and uninterrupted injury while she was his patient. In other words, the court considered that the statute was set in motion from the date of an event which resulted in the injuries, and this because the defendant had imposed upon him a continuous legal duty to use care, skill and diligence, of which he made a continuous breach throughout the extent of his services.

This is certainly a strained conclusion of law and stands absolutely alone so far as we can find anything on the subject. The ground of the action—the moving cause—was negligence in leaving the sponge in the patient's body at the time of the operation. It was not a suit for negligence in the treatment which followed after the operation, but negligence in the operation itself. It is true the sponge remained in the cavity during the entire time the relation of physician and patient existed, but that would not be a continuing wrong, in the sense that the right of action was postponed from day to day until the relation of physician and patient ceased. The patient's right of action was complete after the wrongful sewing up of the wound, though she might have recovered only nominal damages if she had brought the suit immediately, for the injury did not develop at once. If her right of action then accrued, the statute commenced to run, and one year from that time she was barred forever from commencing a suit for damages she suffered. The court is clearly wrong in its opinion; it is not supported by any decision prior to its own, but it is directly contrary to every authority which has passed upon the question where a professional relationship is involved.

The dissenting opinion criticizes the controlling opinion very strongly and takes the view expressed heretofore that the statute of limitations is set in motion when the right of action accrues and that the right of action accrues when the negligent act occurs, and that the fact that the negligent party stands in a quasi contractual relation to the injured party does not alter the rule. The dissenting judges said that "When suit is brought to recover damages upon an act of negligence which is barred by the statute of limitations, it cannot be taken out of the statute by a subsequent act of negligence which merely aggravated the damage already accrued." This is certainly what happened in this case, and it happens in many malpractice cases. The damage is commenced when the physician injured the patient in the first in-

stance, and the subsequent acts in failing to rectify that injury during this connection with the case only aggravates that damage.

This latter case is decided upon unsound grounds—grounds that find no support in the law either by actual decisions in point or by inference from other decisions upon similar causes of action. The court applies a fallacious theory to support the conclusion which it drew from the law and facts, a theory which assigns to a physician a rule of action which is assigned to no other profession. It, therefore, does him an injustice which courts generally will not sanction. No other court ever suggested such a conclusion and it is sincerely hoped none ever will. The true rule and the only just rule which can be said to be founded on authority and reason, is that the statute of limitations against a malpractice action begins to run in all the states of the Union—except Ohio—when the negligent act occurred, which gives the patient a right of action against the physician. There is nothing new in this rule; it is applying a well known principle of law to the particular state of facts involved in a malpractice action. A hardship may be worked, of course, but the law cannot allow a principle to apply in one proper case and not in another.

The statutes generally provide that persons under disability are not subject to the provisions of the statute of limitations until their disability is removed. If the statute does not mention any one as being temporarily or finally disabled from the operation of its terms, then there is no suspension for any one except in a few cases of necessity courts are warranted in suspending the statute, as in the case of war, bankruptcy proceedings, etc. But in other respects, the statute must exempt a party from the operation of the statute. A few such statutory exemptions are those where defendant is out of the state, when defendant is an absconding debtor, and plaintiff's infancy, insanity, imprisonment, etc.

With the few statutory exemptions, however, no one is free from the operation of the statute of limitations. It is a just and reasonable statute and one which, when capable of use, is as comforting to the physician as it is discomfoting to the patient. The term provided ought to be the same in each state of our Union, and each state ought to include in its statutes of limitations express words that malpractice is barred after one year. This end accomplished and one great step in the profession's behalf will have been achieved. We hope it will soon come.



Medico-Legal Bulletin.



PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. 2

NOVEMBER 1903

No. 2

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

\$1.00 Per Annum

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SURGICAL OPERATION WITHOUT THE PATIENT'S EXPRESSED CONSENT.

In the Hennepin County court, of Minnesota, suit was brought by the husband of a patient against a surgeon, asking for the recovery of a fee of \$500 and damages to the amount of \$10,000 on the following grounds: It seems that two years ago an incision was made by a surgeon at the request of and with the sanction of the husband on a new growth, the character of which had not been determined. After the incision was made it was found that the removal of the breast was necessary and, the husband not being within reach at the time, the surgeon operated. Since the operation the patient has not been able to do ordinary household work, and, according to her bill, has been "maimed and disfigured for life." The question involved is as to the limitations of discretionary power on the part of the surgeon and as to whether, under the circumstances mentioned, the surgeon was warranted in proceeding without the expressed consent of the patient. The consent was implied in this case, inasmuch as the surgeon had been author-

ized to make the diagnostic incision presumably for the purpose of determining the nature of subsequent treatment. The point has never been definitely settled by a court of last resort either in this country or England and is one which is most interesting. The Physicians Defense Company, of Fort Wayne, Ind., whose policy the surgeon (Dr. George G. Eitel) carried, has taken charge of the case and it is stated by The Northwestern Lancet that it will probably never come to trial. Aside from Dr. Eitel's personal comfort and benefit it is to be regretted that the matter is not to be carried to a court which can finally settle the matter.—Chicago Clinic.

On September 25 a judgment was rendered against Ada Nichols, and the defendant, Dr. G. G. Eitel, was (through the Physicians Defense Company) awarded costs amounting to \$22.25.

While the Company would be pleased to carry a case to the Supreme Court and secure a final decision, yet its first duty is to the individual practitioner, whose reputation is at stake, and therefore make every effort to secure a favorable decision quickly.—Editor.

ASEXUALIZATION FOR ASSAULT.

A Baltimore grand jury has recommended the asexulization of those convicted of criminal assaults on women, and especially on young girls, thus giving a sort of judicial or official recognition to the proposition that has been repeatedly made by private individuals. That it will be acted on at the present time is rather more than doubtful, but it shows a tendency that may grow even to the point of actual legislation at some future time. Such a punishment might be considered as unconstitutional, but it would at any rate be better than lynching, which is getting so common in some sections that its peculiar methods can almost escape the constitutional provision against "unusual" punishments. Whether the proposed method would be considered unconstitutional we are not prepared to say, but it would be comparatively humane and for a certain class of criminals more effective than the usual methods.—J. A. M. A.

Judicial Decisions.



Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

OBEY THE LETTER OF THE LAW.

A late decision rendered by the Iowa Supreme Court should impress upon local boards of health the importance of complying with the letter as well as the spirit of the law. Suit was brought against Dr. S. C. Kirby, of Grand Junction, for violating the quarantine regulations of the state and local board of health by leaving his premises when quarantined for smallpox and thus, exposing others to the disease. The case was carried through the District to the Supreme Court, which decided in favor of defendant Kirby, on the ground that the law requires a "written" notice from the physician as to the existence of an infectious disease and the necessity for the establishing of quarantine. The evidence in this case showed that no "written" notice was served on the mayor and that the quarantine was established by the mayor upon the mere verbal notice. Hence the verdict was in favor of the defendant—the law not having been complied with.

To a health department striving to protect the lives and health of the people this may seem to be an unreasonably technical decision, and yet there is no question but that when the law defines a particular way in which a duty shall be performed the only proper way is to do it exactly in that way. It is not long since an Iowa court decided that a party could not be held for violating the quarantine regulations of a local board because it was shown that the quarantine card—the danger signal—was not eighteen inches square, as prescribed by the rules and regulations of the State Board of Health.

In another case a physician was prosecuted for not reporting for quarantine a case of diphtheria. A neighbor not knowing of

the existence of this disease because there was no danger signal—the prescribed quarantine card—visited the place with a child. The visiting child contracted diphtheria and died and the physician attending the first case was prosecuted under Section 2573 of the Code. It was shown that the local Board of Health—a district township—had failed to publish or post the rules and regulations adopted by them respecting quarantine and the reporting of such infectious diseases and the presiding judge gave a verdict for the defendant doctor. It is very important to obey the law in the letter and the spirit.—Iowa Health Bulletin.

NOT COMPETENT TO TESTIFY AS TO MISCARRIAGE.

The Court of Appeals of New York holds, in the personal injury case of Gray vs. The Brooklyn Heights Railroad Company, that lay witnesses, even with some experience in midwifery, should not be permitted to compare germs of life at its earliest stage and announce their conclusions. The subject is not a matter of common knowledge or observation. Here the injured party commenced to bleed after a slight jolt in a street car collision. Soon after, something about as large as an egg, and colored like blood, passed from her, and after that she bled for about two weeks longer. Whether or not it was a miscarriage was in dispute, and she was permitted to state that it was one. The other women, who claimed to have had miscarriages, were also permitted to state how what she had passed compared with what passed from them. The court holds that these rulings were erroneous. Manifestly, it says, these witnesses could not have expressed the opinion directly that the party suing had had a miscarriage, yet each was permitted to express that opinion indirectly by saying, in substance, that what happened to the party suing was the same as had happened to herself, when she had, in her opinion, a miscarriage. She could not say that this party's case was like her own. A witness may testify that he had a cold, as that is a matter of common knowledge and experience, but he can not say, "I had pneumonia, and the plaintiff's symptoms are like mine," because it is not the statement of a fact within the range of common knowledge and observation, but of two opinions, both of which are incompetent. The witnesses should have stated the facts only, and the jury, guided by the opinions of the physicians so far as they deemed them reliable, should have drawn the conclusion.—Exchange.

SHOWING EMPLOYMENT OF PHYSICIAN TO MAKE EXAMINATION.

In the case of the Allen B. Wrisley Company vs. Burke, which was brought by the latter party to recover for personal injuries, in the cross-examination of a physician who testified in behalf of the company as to the condition, physically, of the party suing soon after the injury was received, it was developed that the physician had been employed to make the examination for the purpose of becoming a witness in the case, and had been paid for his services in so doing. The fact that the physician had been engaged and paid to make the examination, and for the purpose of giving testimony in the case, the Supreme Court of Illinois holds, was proper for consideration, as bearing on the weight and value of his testimony. The fact that, in developing the proof that the witness was employed and paid to make the examination, it incidentally appeared he was paid by an accident company, did not constitute error demanding the reversal of the judgment.

LEGAL STATUS OF THE ROENTGEN RAY.

Hon. William W. Goodrich, presiding justice of the Second Department of the Appellate Division of the Supreme Court of the State of New York, delivered an address before the Medical Society of New York on the legal aspect of the use of the Roentgen ray. The first decision based on the legal custom that an ordinary photograph, if relevant and properly authenticated, can be taken in evidence, was made for the X-ray photographs by the Supreme Court of Colorado in 1896. The principle announced by the justice for the admission of such photographs, was that as medicine advances, law must also advance, and if medical science shows beneath the skin as formerly photographs did the surface of the body, then this method must be admitted as of evidential value. The next decision was made in Tennessee, and on these decisions the recent practice is based, it being considered necessary, however, for such photographs to be verified by an expert of determined qualifications. With regard to X-ray burns the same rule of law holds as with regard to other medical practice, the physician is bound to treat his patient with such skill as is usual in the time and place where the treatment takes place. And this rule of law is upheld by various decisions.

THE LEGAL MEANING OF "MEDICAL ATTENDANCE."

In giving opinion on the case of J. Luther Pierson, of White Plains, held guilty of criminal neglect in allowing only a faith cure healer to attend a child ill with bronchial pneumonia, Judge Haight, for the Court of Appeals, defined "medical attendance" as attendance by an authorized medical practitioner. He said: "The Legislature first limits the right to practice medicine to those who have been licensed and registered, or have received a diploma from some incorporated college conferring upon them the degree of doctor of medicine; and then the following year it enacts the provision of the penal code, under consideration, in which it requires the procurement of medical attendance under the circumstances to which we have called attention. We think, therefore, that the medical attendance required by the code is the authorized medical attendance prescribed by the statute, and this view is strengthened from the fact that the third sub-division of this section of the code requires nurses to report to a certain qualified practitioner of medicine of the city, town, or place where such child is being cared for,' thus particularly specifying the kind of practitioner recognized by the statute as a medical attendant. Sitting as a court of law for the purpose of construing and determining the meaning of statutes, we have nothing to do with variances in religious belief, and have no power to determine which is correct. We place no limitations upon the power of the mind over the body, the power of faith to dispel disease, or the power of the Supreme Being to heal the sick. We merely declare the law as given us by the Legislature. We find no error on the part of the trial court that called for a reversal."—A. M.

THE VALUE OF A FINGER JOINT.

Five hundred dollars is the value placed on a man's finger joint by a jury in a suit tried in the Circuit Court at Newark, N. J. Henry Klein, a hatter, formerly employed in the factory of Joseph Fisch, in Newark, was the plaintiff. It was shown that while at work on September 21, 1902, Klein's left hand was caught in a forming machine, and one finger was so badly crushed that it was necessary to amputate it at the first joint.

NO COMPULSORY EXAMINATION IN SLANDER CASE.

The Court of Criminal Appeals of Texas says that, in *Bowers vs. State*, a criminal prosecution for the slandering of a female, where the defense consisted of an effort to prove the truth of the allegation; that is, that the accused had had carnal intercourse with the prosecutrix, a motion was made to have the trial court order an examination of the private parts of the prosecutrix by reputable physicians, alleging that such examination would show that her hymen had been ruptured and destroyed by a male organ penetrating the same. This motion was objected to by the state on the ground that the court had no authority to make such order, and the court sustained the objection, and declined to appoint the committee of physicians, and to authorize them to subject the prosecutrix to a private examination. In refusing to make the order, when the prosecutrix objected to the examination, the Court of Criminal Appeals holds that the court below did not err. Of course, it says, if the prosecutrix had been willing to submit to the examination, and such examination would tend to solve a disputed issue in the case, it would be entirely competent for the court to make the order.—Exchange.

IS BATHING INJURIOUS?

Suit has been instituted against the city of Philadelphia in behalf of a man and his wife for alleged damages to the wife, resulting from the fact that she was taken, under orders from the Board of Health, to the Municipal Hospital, and there given a cold bath, from which it is claimed that illness developed.

VERDICT AGAINST HOSPITAL.

A judgment for \$350 against the French Hospital, San Francisco, was rendered, September 21, in the damage suit for \$2,450 brought by Charles Pala, who claimed to have been unnecessarily burned by a hot water bag while a patient at the hospital.

HOMEOPATHY BARRED FROM A GERMAN UNIVERSITY.

The homeopathic practitioners of Germany recently presented a petition to the government, asking that a chair of homeopathic therapeutics be established at the University of Tubingen. Strong opposition to the measure arose, and the government refused to sanction the foundation of the chair.

TO TEST STATUS OF A SO-CALLED CHARITABLE INSTITUTION.

In the fall of 1902 the John N. Norton Memorial Infirmary was sued for damages by a former charity patient, who had undergone an operation and who, while under the influence of the anesthetic, was burned by the contact of a hot water bag. The attorneys for the institution, in answering the plaintiff's petition, pleaded that the Norton Infirmary was a charitable institution, and could not, under the laws, be held liable for damages. The plaintiff's attorneys deny that the infirmary is strictly charitable, and allege that it is conducted, at least indirectly, for compensation. Judge Gordon holds that if it is a charitable institution, it is not liable for damages to the plaintiff. The case will go to trial to decide on the character of the institution. This point has never been settled in Kentucky regarding an institution of that character.—J. A. M. A.

FIRM SUED FOR ALLEGED INJURY TO GIRL'S EYES.

Gustave A. Wessman, guardian ad litem of his twelve-year-old daughter, Dorothy Wessman, has brought action against H. A. Baker & Co., opticians, of No. 1720 Broadway, to recover \$50,000 damages for injuries to the child's eyes by alleged incorrect glasses.

A SUCCESSFUL SUIT FOR SERVICES.

A Chicago jury has awarded Dr. Alex. Hugh Ferguson a verdict of \$1,000 for medical services rendered Frank L. Loring, Jr., and his wife. Dr. Ferguson sued for \$5,000. The physician declared he performed an operation on Loring for appendicitis, and, later, treated him for injuries sustained in a railroad accident. Another item was treatment given Mrs. Loring. Loring averred his salary is \$15 a week and that the charges were too high for a person in his station of life to pay. Several physicians were summoned to testify in the case. Dr. J. B. Murphy declared no regular price could be fixed. Some of his patients, he said, he had charged \$5,000 for an operation for appendicitis. From others he had received nothing.—Exchange.



State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

POWERS OF BOARDS OF HEALTH.

In an opinion addressed to the State Commissioner of Health, Attorney General Cunneen outlines the powers of local Boards of Health with reference to the making of public improvements as a means of abating local nuisances. The question arose through a complaint of a resident of the village of Ossining against a nuisance caused by a defective sewer which the trustees of the village persistently neglected to abate. Attorney General Cunneen holds that the law gives local Boards of Health large power to abate nuisances and says: "I see no reason why a nuisance, whether caused by a municipality itself or a private person, should not be abated, provided it is in effect a nuisance." Mr. Cunneen holds that the local health board has the right in abating a nuisance to make such public improvements as would be calculated to prevent a recurrence thereof. It cannot, however, levy arbitrary assessments upon adjacent property, making the nuisance a pretext. Should the local Board of Health fail to perform its duty, the attorney general says, the State Commission of Health may enforce the performance thereof by mandamus.

RECIPROCITY IN OHIO.

The State Board of Medical Registration and Examination of Ohio adopted the following resolution at its regular meeting, October 6, 1903:

"The Ohio State Board of Medical Registration and Examination will dispense with the examination of a candidate presenting a license from another state board, or from the Board of Examiners of the District of Columbia, issued after an examination on which a general average of 75 per cent. was obtained, on payment of the fee, \$50, required by law; provided, the appli-

cant was, at the time of such examination, the holder of a diploma from a medical college recognized as in good standing by the state board of Ohio, and provided that the applicant has complied in all other particulars with the laws of Ohio governing the practice of medicine and surgery and the rules of the Ohio State Board of Medical Registration and Examination, and provided that the state board issuing such license will, in like manner, accept the license issued by this board.”—Exchange.

MEDICAL RECONCILIATION.

A special meeting of the Council and Fellows of the New York State Medical Association was held October 1, at the Academy of Medicine, New York City. The following resolutions were unanimously adopted:

“Whereas, The members of the New York State Medical Association desire a union of the medical profession in the state of New York, and,

“Whereas, It is deemed expedient for the attainment of this purpose to make further effort to bring together the New York State Medical Association and the Medical Society of the State of New York, under the name of ‘The Medical Society of the State of New York.’

Resolved, That a committee of five be appointed by the chair, and said committee is hereby empowered to do whatever is necessary and expedient to bring about such a union in a just and equitable manner, and,

Resolved, That the committee so empowered may confer, cooperate, and unite with a committee of the Medical Society of the State of New York for the purpose of forming said union of the two medical organizations, and,

Resolved, That a copy of these resolutions be transmitted to the Secretary of the Medical Society of the State of New York, with a request that their conference committee be granted similar powers.”

RECIPROCITY IN DISTRICT OF COLUMBIA.

The Board of Medical Supervisors of the District of Columbia, in their sixth annual report, say that they have decided, after long consideration of the subject, that reciprocity is impossible without an amendment of the law under which they operate. They announce plans for the prosecution of those who are practicing criminally, and those who are liable to a revocation of license for other reasons.

THE AMERICAN CONFEDERATION OF RECIPROCATING EXAMINING AND LICENSING MEDICAL BOARDS.

A meeting of the confederation will be held at the Southern Hotel, St. Louis, Mo., Tuesday, October 27 next, at 2 p. m. This meeting promises to be exceptionally well attended by representatives of state boards desiring practical interstate reciprocity in medical licensures in the near future.

Basis for Reciprocal Medical Registration.—That for the purpose of establishing medical reciprocity among the states composing it, the American Confederation of Reciprocating Examining and Licensing Medical Boards does hereby agree to the following propositions as a basis of reciprocal medical registration.

(a) That as a prerequisite to reciprocal registration, the applicant therefore shall file in the office of the board of the state of which he is a licentiate such evidence as will enable the said board to certify that he is of good moral and professional character.

Such certificate shall be filed with his application for reciprocal registration in another state.

Qualification No. I. (b) That a certificate of registration showing that an examination has been made by the proper board of any state, on which an average grade of not less than 75 per cent. was awarded, the holder thereof having been at the time of said examination, the legal possessor of a diploma from a medical college in good standing in the state where reciprocal registration is sought, may be accepted, in lieu of examination, as evidence of qualification. Provided, that in case the scope of the said examination was less than that prescribed by the state in which registration is sought, the applicant may be required to submit to a supplemental examination by the board thereof in such subjects as have not been covered.

Qualification No. II. (c) That a certificate of registration, or license issued by the proper board of any state, may be accepted as evidence of qualification for reciprocal registration in any other state. Provided, that the holder thereof was, at the time of such registration, the legal possessor of a diploma issued by a medical college in good standing in the state in which reciprocal registration is sought, and that the date thereof was prior to the legal requirement of the examination test in such state.



Medico-Legal Bulletin.



ORIGINAL ARTICLES

Legality of Ear Grafting.

An interesting piece of surgery was recently performed in Philadelphia, that of grafting an ear removed from one man upon the head of another. The patient had lost an ear through some means, and, not caring to go through life one-sided, he offered \$5,000 for an ear to take the absent one's place. A Pittsburg man, who thought more of the money than of his ear, accepted the offer and submitted to the knife. The removal was successfully performed and the grafting perfected without disaster, so far as latest reports show. The seller of the ear is now in the same frame of mind with the buyer, and feels the chagrin of being minus an ornamental appendage, and is willing to pay \$1,000 for one to take the place of the one he sold. An Hungarian has probably accepted the offer by this time. Should he in turn give up his ear and then relent and offer \$500 for another, a new article of commerce has been discovered, a new commodity has been made the subject of bargain and sale. If an ear can be disposed of in this way, it is reasonable to suppose that any other member of the body can likewise be sold, and it may be material at some time to know just what is the legal status of this sort of a transfer and what responsibility a physician assumes in performing such an operation.

The law says that a man can do with his own as he chooses, provided he does not infringe upon the rights of the public or of another—does not injure another individual or the public. He can make, within those limits, any disposal or contract of disposal of any of his belongings he desires. The ear is a part of the body, belonging absolutely to the person, and it would seem

that within the general rule he ought to be free to dispose of it in any way he chooses. He can make a contract of sale of his body or any part of it for scientific purposes, to take effect after his death. But he cannot authorize any one to take his life or make any attempt to take it himself without setting the law in motion to punish the authorized party in the one case and he, himself, in the other. The necessity of the case is no excuse whatever for such an undertaking. The public policy of the state would prohibit such an arrangement between two men.

The grafting of skin is becoming quite common; but there is always a necessity for it which would warrant the operation. Not so with an ear, or arm, or leg. It would be an unusual and probably unheard of situation for a man's life to be in danger because he had no ear. Such an organ has no such function as would make it indispensable to hearing to the extent that the necessity for grafting another man's ear in the place of his missing one would make valid a contract for the purchase of that new ear. Such a contract certainly has doubtful validity. It belongs to a class of contracts which the law may condemn, because public policy forbids their formation. If the class is forbidden, then each member of it must also be avoided. No exception can be made of one member of the class even if, in the particular instance, no injury to the public may have resulted.

Whether or not contracts for the removal of a member of the body of a person are against public policy is for the courts to determine. This determination is one not easy to make, owing to the difficulty in settling definitely what is the public policy of the particular state. Public policy of a state is found in its constitution, statutes and judicial decisions. What may be considered to be public policy in one state may not be so considered in another, and, while usages and customs in the same state vary continuously, what may not be the public policy in that state at one time may be at a later period. As a consequence, it is impossible to lay down any established rule to meet all cases.

In respect to this class of cases, there is no intention to injure or no malice shown in the removal of the member which would bring the act within the criminal statute providing a punishment for violently mutilating or cutting off a member of a person's body. Under this statute the maliciousness of the act is the essential element to constitute it a felony or misdemeanor. Nothing of this kind occurs here, for the person selling the member consents to the operation as a part of the transaction.

But is the public injured by such a class of contracts as here

set forth? If it is, then the class as a whole is against public policy and is consequently void. Many considerations come into question when we take into account the injury resulting to the public. First of all, the government has some interest in its able-bodied citizens retaining their persons intact, for in case the safety of the country demands an increased defense and the regulars and volunteers are insufficient to answer the purposes, drafting is necessary, and should a great number of men report themselves minus an ear, or a leg, or a nose, or an arm, which had been sold to graft on other men, a strange situation would be encountered. Such men, of course, would not be accepted, and to that extent the government would be denied the services of its citizens when most needed. Another situation arises in the state. It has an interest in its citizens retaining their faculties, so that they will not become charges upon its bounty. A contract or transaction which would tend to disable a person so that, owing to his inability to care for himself, the state would thereafter have to care for him ought to be condemned. It would certainly be against the public policy of the state to provide care for him who deliberately sold his faculties for a small compensation to himself. It would be encouraging the bargaining and sale of parts of a man's person for gain, with a tendency to make the state thereafter his care-taker. Such a contract is certainly unconscionable. It would be unenforceable should either of the parties change his mind. The seller could refuse to deliver the member and the buyer has absolutely no recourse. If he had paid his money in advance he could get it back should the seller refuse to perform his part of the contract unless the court should hold that the object of the contract is absolutely illegal. In such a case the law would leave the parties as it found them, and do nothing for either one.

Another consideration that arises is that it is possible for such a transaction to injure the public morals in that it sets a bad example to the community. It may tend to encourage the occurrence of crime by the violation of the statute heretofore referred to. Furthermore, the operation may result disastrously to the seller, and in such a case some one is responsible, notwithstanding the patient gave his consent to the operation, as it was not necessary to save his life.

All these situations must enter into the controversy and receive such weight as a correct decision of the matter demands. The court is bound to consider all phases of the public welfare in determining what is and what is not against public policy. No

court ever having considered such a contract as this, so far as the books show, just what view will be taken finally, when it does come before a legal tribunal, cannot be foreseen, but it is obvious that if a sale of an ear is legal, then other parts of the human body can be sold, for a man has no greater claim to one part than to another. They all alike belong to him. One may be more valuable to his necessities and bring a higher price than another, but that can make no difference in the legality of the sale of each. There certainly can be no division of such a class into legal and illegal contracts. And as a correlative of this rule, if any one of the class (as before stated) is illegal, then all the members are illegal.

In our judgment a court would not sustain a contract of this sort, because of its public character and injurious tendencies. No necessity for it occurs, but only a desire to purchase a member of another's man's person to fill a vacancy on the buyer's person. Its evil tendency ought to vitiate it.

Whether or not the cutting off of an ear for the purpose and under the circumstances above mentioned would be indictable under the law is apparently a close question. The courts have not considered a question like this, because it has never before arisen. There are somewhat similar situations to be met in other transactions, as in prize fighting. Prize fighting, which is an assault and battery by consent, is not sanctioned by the law, because it is injurious to the public and to the participants, and all such participants are indictable under the law—the common law as well as statute law. Others might be mentioned, but they all go to the same end, viz.: an assault and battery by consent is not sanctioned, which is injurious to the public.

As we have said, there is no analogous case in the books. A case somewhat in point is one decided in North Carolina, where a "person accused of stealing consented to take a whipping in consideration of not being prosecuted. A conviction was upheld, but it was on the theory that the assault was committed in pursuance of the unlawful act of felony." If this ruling applies to the case we have in hand, all the participants in that transaction would be liable to prosecution—the man selling his ear, the physician removing it and the man purchasing and receiving it. Each one would be as guilty as any other, and all alike subject to prosecution. The physician is acting by direction of both parties to the contract, but if the act is unlawful, the consent or direction of the patient cannot vindicate him.

However, in any event, the physician is not altogether safe.

There is a possibility that the operation may result in blood poisoning, or some other serious result may occur by which the party losing the ear should die. In such an event a criminal prosecution would be likely to follow, and if the cutting off of the ear were held to constitute a felony, it would follow that the surgeon had committed homicide and must suffer the penalty of the law. His criminal liability, therefore, depends upon whether or no the law will hold that the removal of the ear was an indictable assault. It is such an assault if it can be said that an operation, under the circumstances here made, is against the peace and good policy of the state.

It is a dangerous practice to begin from a legal point of view. It is a wide departure from ordinary surgical work, and, as a matter of fact, is an experiment never before tried. There is no better illustration to be found of the old maxim that "necessity is the mother of invention" than the surgical art. Ailments and diseases heretofore considered incurable have succumbed to the knife. It was the necessity for relief from the fatality of these troubles which medicine could not reach that caused surgery to take hold of the situation and work out the solution which the world demanded. Not so with grafting an ear. It is true that many a man who has lost an ear, or eye, or arm, or leg, has wished there was some means of getting another similar part to take its place. To supply that part from another human being is not gaining the desired end, for the man who gives up his ear or arm is then left in the same condition as the man who receives it, and the public is not benefited in the least. In fact, the public may be injured to the extent that should the part attempted to be grafted fail to attach itself, there will be two individuals deficient in the particular member of their bodies instead of one, and so on should successive attempts to bring about the desired result fail. Such a situation ought not to be countenanced, and we do not believe it will be by the sovereigns of the states.

In view of the uncertainty of the law in regard to an operation for the removal of an ear for the purpose of grafting, we cannot advise the profession to make such an experiment. The risk is too great for the benefit accomplished. The law may devise some means to meet this situation. As it now stands, however, nothing is certain, but all is mere conjecture, with a possibility of failure in any event. The temptations to attack are so great now that there is little use in placing new ones before the public.



State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

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STATE BOARDS OF REGISTRATION—COMING EXAMINATIONS.

Missouri State Board of Health, Southern Hotel, St. Louis, Dec. 14-16. Secretary, Dr. W. F. Morrow, Kansas City.

Medical Council, Philadelphia, Dec. 15. Secretary, Dr. Isaac B. Brown, Harrisburg.

Medical Examining Board of Virginia, Lynchburg, Dec. 15-18. Secretary, Dr. R. S. Martin, Stuart.

Colorado State Board of Medical Examiners, 1723 Tremont street, Denver, Dec. 22-24. Secretary, Dr. S. D. Van Meter, Denver.

Utah State Board of Medical Examiners, Salt Lake City, Jan. 4, 1904. Secretary, Dr. R. W. Fisher, Salt Lake City.

State Medical Examining Board of Washington, Tacoma, Jan. 5-6, 1904. Secretary, Dr. P. B. Swearingen, Tacoma.

Board of Medical Examiners of Arizona, Phoenix, Jan. 4-5, 1904. Secretary, Dr. Wm. Duffield, Phoenix.

State Medical Examining Board of North Dakota, Grand Forks, Jan. 5, 1904. Secretary, Dr. H. M. Wheeler, Grand Forks.

Board of Medical Examiners of the State of Oregon, Portland, Jan. 5, 1904. Secretary, Dr. Byron E. Miller, Portland.

Colorado State Board of Medical Examiners, 1723 Tremont street, Denver, Jan. 5-6, 1904. Secretary, Dr. S. D. Van Meter, Denver.

Minnesota State Board of Medical Examiners, State Capitol building, St. Paul, Jan. 5-7, 1904. Secretary, Dr. C. J. Ringnell, Minneapolis.

State Board of Health of Rhode Island, State House, Providence, Jan. 7, 1904. Secretary, Dr. G. T. Swarts, Providence.

The next examination by the State Board of Medical Examiners will be held at the capitol building, Des Moines, Iowa, January 26 and 27, 1904.

Indiana State Board of Medical Registration and Examination, Indianapolis, Jan. 13, 1904. Secretary, Dr. W. T. Gott, Crawfordsville.

Board of Medical Examiners of South Dakota, Cataract Hotel, Sioux Falls, Jan. 13-15, 1904. Secretary, Dr. H. E. McNutt, Aberdeen.

Wisconsin Board of Medical Examiners, Milwaukee, Jan. 12, 1904. Secretary, Dr. F. R. Forsbeck, Milwaukee.

Vermont State Board of Medical Censors, Y. M. C. A. building, Burlington, Jan. 13-14, 1904. Secretary, Dr. S. W. Hammond, Rutland.

Board of Medical Supervisors of the District of Columbia, Washington, Jan. 14, 1904. Secretary, Dr. Wm. C. Woodward, Washington.

Illinois State Board of Health, Great Northern Hotel, Chicago, Jan. 14-16, 1904. Secretary, Dr. J. A. Egan, Springfield.

Iowa State Board of Medical Examiners, Capitol building, Des Moines, Jan. 26-27, 1904. Secretary, Dr. J. F. Kennedy, Des Moines.—J. A. M. A.

FINED FOR INSULTING THE MEDICAL PROFESSION.

A teacher and a capitalist of Elberfeld, Germany, have been fined \$18 each for "insulting the medical profession." The first mentioned is president of the local association of "nature healers," and with the co-operation of the other, advertised in the local papers a free course of lectures for the benefit of physicians on the diagnosis of eye affections. The physicians of the place regarded the advertisement as a deliberate insult and sued for damages. The court took the same view and fined the defendants as stated.

SENTENCES FOR FATAL QUACK PRACTICES.

The German charlatan, Runge, has been condemned to three months' imprisonment at Lauenburg on account of the death of a young woman whom he treated by extensive venesection and application of twenty-two leeches. She had a gastric ulcer and succumbed within a few days to debility from the loss of so much blood. Another charlatan, Scheibler, has been fined \$75 at Berlin for fraudulent practices and the use of the title, professor.

CREATES OFFICE OF MEDICAL INSPECTOR.

Chapter 221 of the Laws of New York of 1903 amends Section 4 of Chapter 545 of the laws of 1896, by providing that the commission in lunacy may appoint a medical inspector, who shall be a well educated physician, a graduate of an incorporated medical college, and who shall have had actual experience in an institution for the care and treatment of the insane. Such inspector shall receive an annual salary of \$3,500, and traveling expenses. He shall, subject to the direction of the commission, inspect the state hospitals and other institutions for the insane which are subject to the supervision or visitation of the commission, and shall make an examination, so far as circumstances may permit, of the patients therein confined, especially those admitted thereto since his preceding visit, giving such as may request it suitable opportunity to converse with him apart from the officers and attendants. He shall perform such other duties as may be prescribed and directed by the commission.

REQUIRES LICENSE FOR VENDING DRUGS ETC.

Chapter CCXXXIII of the Statutes of California of 1903 provides that no person, as principal or agent, shall conduct as an itinerant vendor the business of selling drugs, nostrums, ointments or any appliances for the treatment of disease, deformities or injuries, without a license. An annual fee of \$200 is charged.

PHYSICIANS' FEES AND SMALL DEBTORS.

That small debtors can be forced by law to pay up was discovered when Comptroller Grout, of New York, was notified by a Fulton street firm, with a claim of \$7 against Policeman Walter S. Chapman, of the Canarsie station, Brooklyn, that it proposed to garnishee his salary until the full amount was paid. It was found that at the last session of the Legislature a bill was passed, which obtained the approval of the Governor, providing that in all cases where a man or woman makes a salary of \$20 per week or over an employer, on legal action being taken by the creditor, shall deduct ten per cent. from the salary of the employe until the judgment has been fully satisfied.

BAN ON CARELESS DISTRIBUTION OF MEDICINES.

Chapter 494 of the Laws of New York of 1903 provides that any person, corporation, etc., who distributes or causes to be distributed, any free or trial samples of any medicine, drug, chemical or chemical compound, by leaving the same exposed on the ground, sidewalk, porch, doorway, letter boxes, or in any other manner, that children may become possessed of the same, shall be guilty of a misdemeanor, etc.

REQUIRES CONSENTS FOR TUBERCULOSIS CAMPS.

Chapter 638 of the Laws of New York of 1903 provides that a hospital camp or other establishment for patients with pulmonary tuberculosis shall not be established in any town unless the board of supervisors of the county, and the town board of the town, shall each adopt a resolution authorizing the establishment thereof, and describing the limits of the locality in which the same may be established.

DRUGGIST NOT RESPONSIBLE IN COUNTER PRESCRIBING.

The Appellate division of the New York Supreme Court handed down October 30 an important decision regarding the legal liability of druggists for injuries received by patients whom they see fit to treat. The plaintiff alleged that he had received a slight cut on his thumb and that a drug clerk bandaged the wound and instructed him to keep the dressing wet with a carbolic lotion; that he had put five or six drops of the acid on the bandage, with the result that blood poisoning set in, necessitating the amputation of the thumb. The defense was that druggists were not permitted, under the law, to practice medicine or surgery, and that the plaintiff was guilty of contributory negligence. This contention was upheld by the trial court and the Appellate Court.—Exchange.



Medico-Legal Bulletin.



PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. 2

DECEMBER 1903

No. 3

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

\$1.00 Per Annum

SUBSCRIPTION RATES

Single Copies 15c

ADVERTISING RATES FURNISHED UPON APPLICATION. Non-ethical advertisements will not be received, the publishers reserving the right to reject and discontinue any advertisement at any time.

To its readers and friends the Medico-Legal Bulletin extends the usual good cheer of the holiday season and trusts that the coming year will be marked with further advance in the work of the profession. From the past the Bulletin can only draw encouragement. It has been received with favor and been read with interest, as evidenced by the many expressions of approval from its patrons.

It is the aim of the Bulletin to aid the work of the profession and assist in its practical administration; in this way we are better assisted in accomplishing our main ends, namely, defending the profession against the attacks of ignorant and malicious patients. As suggested in the initial issue, "It owes its inception to the numerous requests of medical practitioners for reliable and accessible information relative to the laws governing the practice of medicine, the relation of the physician to the public and the state, and his rights, duties and liabilities under those laws." In this way the Bulletin is the property of its readers and is dedicated entirely to their use and information; other than this it has no purpose in appearing. It has been planned to supply an existing demand for a practical interpretation of the laws in any way relating to the profession, and for this reason we have attempted to emphasize the "Inquiry Department."

The laws relating to the profession, its rights and liabilities, might be printed in full in these pages and scattered broadcast, but this would be useless, as the laws in that form are very accessible and would in no way accomplish our end, nor would it profit our readers much to read abstract statements of the laws or to have it applied to hypothetical facts. But the best school is the one which applies the principles of law to facts and conditions as they arise in practical life. Medical jurisprudence does not receive the study or attention either in the schools of medicine or of law that its importance to the community warrants. Bearing this in mind, we propose to supply, at least to some extent, what others have neglected, by fortifying the profession as to the rights it enjoys and the duties imposed upon it, by interpreting the law and applying it to a submitted statement of facts. However, to accomplish this, it is necessary to know the conditions confronting the practitioner. If you are in doubt as to your rights or liabilities, or as to what course to pursue, state the facts to the "Legal Department." We assure you of an earnest effort to give you a correct statement of the law involved. From our experience we conclude that practically every physician and surgeon at some time during his career has been or will be subjected to the annoyance and expense of defending a civil malpractice damage suit. We also believe that most of such suits are absolutely groundless, and, if not conceived in malice, at least in ignorance of law and fact. Whatever the grounds of the action may be, however, the expense and annoyance of defending is ever present. The plan of this Company reduces the expense to the contract holder of defending the suit to a minimum. The only possible way of relieving the profession from the annoyance and hazards of litigation is to demonstrate to the ignorant and malicious patient and his fee-hungry shyster that the practitioner knows his rights, or can easily ascertain them, and cannot be intimidated by threat or the fear of an expensive defense. Every successfully defended suit is a step toward this end. The greater the number of contract holders, the greater the number of suits defended. The successful defense of any suit for civil malpractice is of interest and benefit to the profession as a whole. We desire to reach every recognized member of the profession, and would be pleased to forward the Bulletin to any address sent us. Give us the names of your friends and interest yourself more in the column of inquiries. We believe we can make the Medico-Legal Bulletin worth the time you spend reading it.

DISSATISFIED WITH HIS TREATMENT OF BROKEN ARM.

A very unusual case, in which a physician is accused of having unskillfully dressed a broken arm and with having negligently treated a patient, has been started in the Common Pleas Court, Akron, Ohio. In this case, Martin L. Pinnicks, next friend to Sylvia Pinnicks, a minor, has brought an action against Dr. W. J. Emery, asking for a judgment of \$5,000.

The petition goes on to claim that on April 21, 1902, Sylvia Pinnicks, being then 10 years old, fell from a tree, broke her arm and dislocated the shoulder of the same arm. It is claimed that Dr. Emery was summoned and attended the little girl, and that he "unskillfully bound up, dressed and bandaged the same, and failed to use the proper appliances, splints and bandages to keep the fractured and dislocated bone in proper place."

As a result of this, it is claimed that the shoulder became very weak, and that the bone has since slipped out of place. It is claimed further, that the ends of the bone caused by the break and fracture were not set; that they were negligently suffered to slip sidewise and extend past and overlap each other, causing a large lump and causing the muscles to become weak and shrunk. The petition sets forth further that the bone is still crooked and broken, and that the child is crippled for life.—Akron Democrat.

SUES HOSPITAL AND DOCTOR.

A suit for \$10,000 damages against the Presbyterian Hospital and Dr. Truman W. Brophy was filed in the Circuit Court December 10 by Don S. Cutter, through his father, George M. Cutter. It is alleged that in February, 1902, the plaintiff engaged the defendants to treat and care for him, but was not furnished with suitable rooms, nurses or attendants, and an operation that was performed on him was a failure.

SUES THE SURGEONS.

Osborn Myers, telephone lineman, at Coshocton, Ohio, whose fall from a pole resulted in the amputation of his right arm, brought suit against Dr. Jesse McClain and Dr. J. T. Beall, two prominent physicians, for \$10,000, alleging unskillfulness and negligence in setting the broken bones.

MEDICAL JURISPRUDENCE AND PHYSICIANS' FEES.

It is generally expected that while in college the student shall be instructed regarding his rights and duties before the law. In reality, his lectures usually deal with the latter, and he knows but little more concerning his own rights legally at the end of the term than when he started.

What he must show in order to collect a disputed account, how far he may proceed with medical and surgical measures when a patient is unconscious, the responsibility for his fee in cases of accident, under what circumstances a third party is responsible, and what constitutes the use of "ordinary skill," are points upon which the average student is woefully ignorant when he leaves college.

The following list of questions propounded to the graduating class of a prominent homeopathic college is a fair sample of what should be taught to all students, and yet we will wager that not one physician in ten from any or all schools can answer correctly fifty per cent. of them. They are as follows:

"What must a physician show in order to recover for his services? What degree of skill does a physician, treating a patient, represent himself as possessing? Can a physician properly and safely experiment, and if so, when, how, and under what circumstances? (a) Is it any defense to a physician's claim for services that his treatment has not benefited the patient? (b) State the exception, if any. In suit for malpractice, what is the test on physician's treatment as to such a claim? When, how, and under what circumstances is it necessary for a physician to advise a patient, nurse and family as to care of patient? How, and under what circumstances may a physician temporarily leave his practice? What are the essential conditions necessary to raise a question of privileged communication between physician and patient? What should a physician do, before performing a serious operation? (a) Can an attending physician perform an autopsy? (b) If so, what, if any consent, must be obtained? What, if anything, beyond passing examinations and receiving license, must a person do in order, legally, to practice medicine in New York? What, if any, penalty does a physician incur who fulsomely advertises himself as a practitioner?"—Clinical Reporter.

Judicial Decisions.



Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

DR. MARCY WINS SUIT.

In the suit for alleged malpractice brought by Fred B. Lamphere against Dr. William H. Marcy, Buffalo, in which \$10,000 was claimed on the ground that the defendant declared the child dead, although the child was alive and lived for several hours, the court decided that there was no cause for action because the possibilities of life in a prematurely born child of that age were so slight that it eliminated the question of damages from the case.—J. A. M. A.

VALIDITY OF CONTRACT NOT TO PRACTICE IN OLD LOCALITY.

Two physicians practicing their profession at a certain place as partners entered into a written contract for the dissolution of the co-partnership, one purchasing the property of the co-partnership, and the other agreeing not to practice medicine in the vicinity of that place. Commenting generally, the Supreme Court of Oklahoma says, *Hulen vs. Earel*, that these contracts do not seem to be unusual. The books are full of such cases, and probably more of those between physicians than of any other profession or trade. They have been uniformly upheld by the courts of the several states, where they have not been controlled by statutory provision, and equity has always granted relief by injunction to restrain a breach, for the reason, principally, that the injury arising from such breach can not be estimated or repaired. A suit at law affords no adequate remedy, and, the damage being continuing, and accruing from day to day, the object of the contract can only be obtained by the parties to the contract conforming to its express terms. It is, therefore, very proper for a court of equity to enforce such a contract by grant-

ing an injunction to prevent a breach when it is within the rules laid down and within the rules of the controlling statute. One of the controlling features in all of the cases on this subject seems to be that, if such contracts are not upheld, the subject-matter would not be salable. But the court holds that this particular contract was in violation of the Oklahoma statute and invalid, although it says that it would have been an easy matter for the parties to have made a contract complying strictly with the provisions of the statute, one of which is that one who sells the good will of a business may agree to refrain from carrying on a similar business within a specified county, city or part thereof, so long as the buyer or person deriving title to the good will carries on a like business therein, whereas it will be observed the contract here was not to engage in the practice of medicine in the vicinity of a certain place, without any limitation.—Exchange.

DEATH FROM APPENDICITIS CAUSED BY BICYCLE RIDE NOT "ACCIDENTAL."

The evidence of the party suing in the case of Appel vs. the Aetna Life Insurance company tended to prove, what the Fourth Appellate Division of the Supreme Court of New York assumes for the purposes of the case, that the appendicitis which resulted in the death of the insured in this case was caused by a bicycle ride which he took. But the court declares that it can conceive of no theory on which it could be said, from the facts disclosed by the evidence, that the death of the insured resulted from "bodily injuries, effected * * * through external, violent and accidental means," within the meaning of the insurance policy sued on. The most, it states, that could be said was that the result was accidental, but the means which produced it were not accidental. The evidence wholly failed to show that the insured did anything which he did not fully intend to do, or that what he did was not precisely as intended; therefore, the result of such acts—his death—was not produced by accidental means." The court's attention was not called to any case which holds, and it failed to discover any authority for the proposition, that a result which is produced by means all of which, and every detail of which, was intended, can be said to have been produced by accidental means, simply because the result which followed the employment of such means, exactly in the manner intended, was different from the result anticipated.

PHYSICIAN WINS SUIT.

A suit against Dr. Edward J. Bernstein, Baltimore, Md., for \$10,000 damages, for the alleged loss of the life of a child from meningitis following the enucleation of an eyeball, has been decided in favor of the defendant.

DAMAGES ALLOWED FOR LOSS OF EYESIGHT.

In the personal injury case of Vant Hul vs. the Great Northern Railway company, where the party suing, a young man of 18 years, lost the entire vision of one eye, and, according to the testimony, the other eye was impaired to the extent of about nine-tenths, with a strong probability that the sight would ultimately be entirely lost, the Supreme Court of Minnesota holds that it could not be said that a verdict of \$14,400 was excessive.

IMPORTANT DECISION AFFECTING AGENTS.

Macdonell, Hood & Penney, of Minneapolis, general agents for the Ocean Accident company, sued the Kellar Manufacturing company, of Sauk Center, for the premium on a liability policy sent by them to the company and held for two months before it was returned as "not wanted." The insurance men claim that the delay in returning the policy had amounted to an acceptance. The jury in the trial court awarded them damages in the sum of \$10.25, the pro rata of the premium during the time held, but the case was carried to the Supreme Court, the agents holding that they should recover the full amount of the premium, \$82.50. The Supreme Court of Minnesota has now sustained the action of the lower court.

A UNIQUE LAWSUIT.

A suit for \$25,000 has been entered against Dr. V. P. Blair, of St. Louis, for removal of a normal appendix—presumably when a diagnosis of appendicitis had been made. The allegation is that he "willfully, maliciously and knowingly or ignorantly, negligently and unskillfully removed her vermiform appendix, causing the patient great pain and endangering her life; and

that, as she did not have appendicitis, the operation was unnecessary and harmful." One is almost astounded at the allegations contained herein. In the first place, if the operation were done for some condition other than appendicitis and the appendix were removed merely for prophylactic purposes, the surgeon did exactly right—every appendix should be taken out whenever the operator can reach it easily, its presence being a constant menace to life; or if a diagnosis of appendicitis was made and a normal appendix found (as has happened many times in the work of surgeons of even greater experience than Dr. Blair) it would have been very nearly criminal not to have removed the appendix; no man can tell what that "organ" contains until he opens it. In the second place, that any surgeon should "maliciously" remove any part of the human body—except, possibly, in a fight—is incredible; any lawyer who asserts it is a fool; any doctor who testifies to it is worse. In the third place, while it is possible that "an appendix unskillfully or negligently removed" might be a source of danger temporarily and cause some pain, that it should be "harmful" is the height of absurdity; if any member of the medical profession can be found who will testify that removal of the appendix is "harmful," he is either woefully ignorant or will perjure himself in wilfully trying to injure Dr. Blair. Finally, the only possible basis for a suit like this would be that the surgeon, knowing that the patient had no trouble in the region of the appendix, deliberately opened the abdomen and removed the appendix merely to get a good fee; or that by careless closure of the incision a hernia resulted. Any doctor who would testify otherwise either knows nothing of surgery or is trying to injure the defendant.—Exchange.

Dr. W. B. C. Bullard, of Des Moines, Iowa, holding Physician's Certificate No. 5411 and Itinerant's License No. 11, has been convicted by the Clay County District Court of obtaining negotiable paper upon false and fraudulent pretenses. He has applied for a new trial.

NOT A REAL DOCTOR.

On a charge of having practiced medicine without a permit from the State Board of Medicine, Bert Howard, a young medical student, living at 37 Boylston street, Boston, pleaded guilty in Judge Sullivan's court recently and paid a fine of \$100. He was quickly taken out of the court house by a number of friends.

DUTY OF INJURED PERSONS IN EMPLOYMENT OF PHYSICIANS.

The Appellate court of Illinois for the Fourth district holds in *C. & E. I. R. R. Co. vs. Burrige*, a personal injury case, brought by the latter party, that an instruction stated the law correctly which told the jury that it was the duty of the party suing "to employ such doctor or doctors for the treatment of his injuries as ordinary prudence in his situation at the time of the injury and thereafter required; and to use ordinary judgment and care in so doing, and to select only such doctor as was of at least ordinary skill and care in his profession; but the law does not make him an insurer in such case that the doctor will be guilty of no negligence, error in judgment, or want of care, and where such errors or mistakes occur in the treatment, the injury resulting from such mistakes is properly regarded as part of the immediate and direct damages resulting from the injury."

FAILURE TO USE TOURNIQUET.

The Supreme Court of Pennsylvania says, in the malpractice case of *De Long vs. Delaney*, that the husband of the party suing had his leg badly crushed in attempting to board a railroad train and the party sued, a physician, was called in on the emergency to treat him. The physician rendered the first aids, washed and dressed the wound, bandaged the leg, and then relinquished the case to the family physician, who was expected, and arrived by the same train on which he (the first physician) left. The injured man remained under the care of the family physician for about two hours, and then was put on a train and taken to a hospital, where his leg was found to have bled profusely, and where he died a few hours later from loss of blood.

At the trial the party suing proved the foregoing facts; gave some evidence that a tourniquet was an instrument in common use among physicians for stopping the flow of blood, and that it had not been used by the physician sued. She then rested her case, and the trial court entered a non-suit, which the Supreme Court holds was proper. It says that the negligence relied on was a failure to use a tourniquet. But there was no evidence at all, from any witness competent to express an opinion, that a tourniquet should have been used, or that the tight bandage applied by the physician sued was not fully equivalent—in short, that there was any negligence shown. The jury could only have made an uninformed guess. Negligence can not be found in that way.

ARREST OF BABY INCUBATOR EXHIBITOR.

A baby incubator exhibit having been established at Coney Island, New York, the Society for the Prevention of Cruelty to Children recently caused the arrest of one of the proprietors on the charge of conducting a "baby farm." The case was brought to the Coney Island court, and Dr. Martin A. Cooney, the inventor of the incubator, being called upon to testify, stated that the lives of fifty out of fifty-two infants had been saved by its means, and that out of nineteen cared for thus far at Coney Island, but one had been lost. In order to enable the court to come to an intelligent decision in the matter, a committee, consisting of Dr. William Brennan, of the State Medical Board, the superintendent of the State Charities Department and the president of the New York Board of Health, was appointed to investigate and express an expert opinion. As a result the committee were so favorably impressed with the merits of the apparatus that they recommended that at the close of the exhibition at Coney Island the incubators should be purchased by the city, half of them to be sent to Bellevue hospital and the others to the Kings County hospital in Brooklyn.—Boston Med. and Surg. Journal.

JAIL FOR DOCTOR AND NURSE.

After witnesses had testified before Judge Biddle in Quarter Sessions Court No. 1, Philadelphia, Pa., to the good reputation and standing in the community of Dr. Stanislaus Rosmus and Martha Divoranschick, a nurse, who were convicted of conspiracy in securing \$121 from Katie Zocharewits, of 2322 Callowhill street, the prisoners were sentenced to two years each in the county prison.

The conspiracy consisted of representations made to Mrs. Zocharewitz to the effect that she was suffering from a complication of diseases. The sentence was received by the defendants with tears.

PROHIBITION AS TO EXHIBITIONS OF HYPNOTISM.

Chapter 219 of the Laws of Kansas of 1903 provides that any person who shall induce or permit any child under 18 years of age to practice or assist or become a subject in giving public exhibitions of hypnotism, mesmerism, animal magnetism or so-called psychical forces shall be guilty of a misdemeanor, and on conviction be fined or imprisoned, or both.

DOCTOR WILL HAVE TO PAY THE COSTS.

The town of Hamburg, N. Y., has come off victorious in an interesting battle, where the amount involved was small, but the final bill will probably not seem very small to the man who will have to pay it.

During the smallpox epidemic in Hamburg the town board employed Dr. Garra K. Lester to take care of the cases. He did so, and sent in a bill for \$318.95. The town board audited the bill as \$208. The difference lay in a disagreement as to when the employment of Dr. Lester to care for the smallpox cases began, the doctor maintaining that it began when he actually began to treat the cases, and the town board maintaining that it began only when he was formally employed by the town.

Dr. Lester obtained a writ of certiorari to compel the town board to audit the claim and the case was fought for the town by John W. Fisher. The Court of Appeals has just handed down a decision affirming the judgment of the Appellate Division that 'there was no employment of the relative by the town board or on its behalf prior to the adoption of the resolution at the meeting of the board of health late in the evening of March 9, 1903.'

The order is reversed and the writ dismissed with costs. The costs in the action will be several times the original bill, and these the doctor will have to pay.

QUEER THINGS JURIES WILL DO

The Mutual Life of New York is resisting a claim under a \$1,000 policy on the life of Frank Dickie, of Wichita, Kansas, and although it has been defeated in the lower court, has taken an appeal, and apparently with good reason. Dickie insured December 26, 1893, and left home February 5, 1901, with a man named Randall, and was never seen afterward. Mrs. Dickie supposed she had been abandoned and in February, 1902, was granted a divorce on grounds of abandonment, remarrying the next day, overlooking the Kansas law which makes a divorce decree absolute only after six months. After her remarriage a pile of human bones was found under the Randall house and Mrs. Dickie claimed that they were those of her husband; that he had been murdered by Randall, and made a demand for the \$1,000 due under the policy, claiming that he had died within the year for which the premium had been paid. The jury in the lower court returned a verdict in her favor, which shows what queer things juries will sometimes do.

DAMAGE SUIT COLLAPSES.

In the suit brought by Martin Lathrop against Dr. Samuel J. Hunkin, San Francisco, in which the plaintiff claimed \$50,000 damages for alleged malpractice, the plaintiff failed to appear, and the judge ordered a verdict for costs for the defendant.

COMPROMISE VERDICT.

The suit for \$10,000 for alleged malpractice in an operation for tumor brought against Dr. Edwin B. Claybrook, Cumberland, Maryland, was decided October 25, by a compromise verdict of one cent for the plaintiff. Dr. Claybrook is a Baltimore and Ohio railroad surgeon.

LIMIT AUTHORITY OF STAFF.

The managing board of Milford Hospital, Massachusetts, has notified each member of the staff officially that "no operation of a dangerous character shall be performed without the consent of at least two members of the staff other than those on duty at the time of the performance of such operation."

PROHIBITION ON DISTRIBUTION OF DRUGS.

Chapter 81 of the Laws of North Dakota of 1903 provides that any person who shall by himself, his servant or agent, or as the servant or agent of any person, leave or deposit on the doorstep or premises owned or occupied by another, or who shall deliver to any child under 14 years of age, any patent or proprietary medicine or any preparation, pill, tablet, powder, cosmetic, disinfectant or antiseptic, or any drug or medicine that contains poison or any ingredient deleterious to health, as a sample, or in any quantity whatever for the purpose of advertising, shall be deemed guilty of a misdemeanor. The terms used in this act shall include all remedies for internal or external use, either in package or bulk, simple, mixed or compounded.

THE METROPOLITAN SUSTAINED.

The Circuit Court at Wabash, Ind., has rendered a decision in the case of Mary A. Ellis against the Metropolitan Life, which is of interest to industrial companies. Mrs. Ellis insured the life of her son, who died soon afterward, but the company refused payment on the ground that the mother was not being supported by her son and therefore was not pecuniarily interested in the policy. The court holds that Mrs. Ellis did not have an insurable interest and that the mere fact of relationship did not permit her to stand as a beneficiary under the policy.

DAMAGES FOR VIVISECTIONIST.

Dr. Bayliss, a professor at the London University College Hospital, London, on Nov. 13 recovered \$10,000 damages for libel against Stephen Coleridge, honorary secretary of the National Anti-Vivisection Society and son of the late Chief Justice Coleridge. Mr. Coleridge charged plaintiff with torturing a dog in the course of vivisection experiments. The charges rested on the statements of two Swedish women students, who gave a horrible picture of the college laboratory, saying dogs howled in agony from tortures inflicted on them while they were fully conscious.

PHYSICIAN ENJOINED FROM PRACTICE.

In the case of Dr. Horace W. Barnard, Emmetsburg, Iowa, who invoked the aid of the law to prevent Dr. J. C. Davies, whose practice, property and residence he had bought, from practicing again in Emmetsburg, the court has decided that the temporary injunction shall be made permanent, and that Dr. Davies shall not practice in Emmetsburg nor in Palo Alto county.



Medico-Legal Bulletin.



ORIGINAL ARTICLES

RECOVERY OF FEES AS BAR TO ACTION FOR DAMAGES.

The question as to how far a judgment for services rendered by a physician is a bar to a claim for damages arising out of such services, has been much discussed by the courts throughout the states of the Union, and is one which involves the entire theory of a physician's contract with his patient.

There are two distinct lines of decisions, one following the New York cases, which hold that a recovery for services by a physician is a bar to recovery of damages arising out of such services, even if such judgment is taken by default. The other line of decisions, following the Wisconsin court, and which prevails in most western states, is to the contrary. As a general conclusion, we would state that the trend of the courts is against the New York theory; but under some circumstances the courts generally hold that a recovery of judgment for services is a bar to an action for damages.

The true basis upon which the theory in both lines of decisions rests is *res judicata*. A final judgment settles and concludes every defense that was or might have been urged against the cause of action upon which it is based, whether there was an answer setting up the defense or the judgment was rendered upon default; but it is not conclusive as to cross-action that is an independent, affirmative cause of action in favor of the defendant against the plaintiff, unless that cause or cross-action was, in fact, involved in the issues of the former case, either as a set-off a counter claim or a defense.

The whole question then turns on the issues presented on the trial to recover fees. If, in the suit to recover fees, the negligence of the physician is set up as defense and contested, and a judgment is recovered, this is certainly an adjudication on the merits of the case, and would be a bar to any action for damages arising out of such services. However, if no answer is filed to the action for fees and the same is taken by default, it is generally held, except in New York, that a recovery of judgment for fees is not a bar to recovery of damages, on the theory that a judgment can only act as a bar or conclusion of those facts which were put to issue in arriving at the judgment. If, however, the code provided that a defendant can either set up certain matter as a counter claim, or enforce his right in a separate action, we fail to understand how a judgment for services under any circumstances can be a bar to the recovery of damages, unless the entire statement of facts upon which the defendant relies as the basis of his claim for damages was fully set up in answer to the suit for fees.

In a leading case on this question the court said: "The party had a right to control his own actions. If it were otherwise, and he were required, before proceeding with his action, to defeat the suit before the justice, he might then be driven to the trouble and expense of twice establishing his cause of action: once for the purpose of defeating the claim for fees, and again to recover in his own action; which, assuming his complaint to be true, involve great damage and require the investigation and solution of an intricate and difficult question. By doing nothing before the justice, he might control his own action; or he might contest judgment before the justice without thereby being precluded from pursuing his cross-action. But if he would set up and litigate his cause of action as a counter claim, he could not maintain the same claim in a collateral action, and would be required to content himself with a recovery within the jurisdiction of the justice; and if he became a party to an issue under which he might have urged the matter of his claim as the defense, it was necessary for him to succeed in defeating a re-

covery against him, or he must fail in his own action afterwards; unless he might show that, in fact, the subject matter of his actual defense did not embrace his cause of action."

Proceeding on the assumption that the physician's contract with his patient is an entire contract, i. e., that the physician agreed that in consideration of the fee received he will use the care and skill required of the physician in good standing and of average ability, but in no way guaranteeing a cure, the recovery of judgment for fees would certainly be a bar to malpractice, if the theory of *res judicata* is given full force. The line of distinction between the cases would therefore seem to lie between those in which the judgment recovered was one upon the merits, upon a trial, and those in which the judgment has been rendered by default on the patient's part. This distinction rests entirely on the doctrine of *res judicata*, the foundation of which is that the parties ought not to be permitted to litigate the same issue more than once; that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, the judgment thereof, so long as it remains unreversed, shall be conclusive upon the parties and those in privity with them.

The difficulty is to determine what points were in issue and determined by the judgment; or, rather, what issues were necessarily involved in the judgment, although not directly and expressly made and litigated. The American authority seem to have generally gone further in applying the doctrine of *res judicata* in that respect than the English courts, whose general tendency is to confine it to matters actually disputed. Looking at the subject from a practical standpoint, there is certainly great danger of working injustice, unless great caution is used, in holding that a judgment is an estoppel upon a certain point on the grounds that it was necessarily involved in a judgment, although the issue was not expressly tendered and litigated. Frequently one learned in law can reason out, to his satisfaction, that a particular point was necessarily involved in a judgment, when such a thing would never occur to the ordinary layman.

"Thus, where a physician sued a party for services rendered by him in treating a broken limb, and the defendant appeared and pleaded general denial, it was held that the fact of performance of plaintiff's contract was impliedly averred and denied by the pleading, and that a judgment in favor of the plaintiff for the services as claimed necessarily included the fact of

due performance by the plaintiff, and that the question of malpractice was involved in the issue, but concluded by the judgment, so that the patient could not thereafter sue upon that cause of action. A similar rule has been applied in Massachusetts, though the services were of an entirely different nature, where defense was taken to the first action on the ground of negligence, but without seeking to recoup the damages. But these cases have been vigorously criticized and resolutely denied. This may be illustrated by a judgment in a Wisconsin case, where, after an action was commenced for malpractice in attendance upon a certain case, defendant instituted a suit before a justice of the peace for the value of his services for such attendance, in which suit the defendant interposed a general denial as to the value of the services, but afterwards failed to appear at the trial, and judgment was given for the physician for the amount complained. It was held that such judgment was no defense to the action for malpractice, and supplementary answer setting it up as a plea in bar was of no avail."

In an opinion delivered by a Wisconsin court we find the following: "The right to sue for malpractice is both a defense and a subject for cross-action, and if used for either purpose—that is, either by way of defense or recoupment—it destroys the vitality of the claim, if sought to be used in an independent action; and if the plaintiff has appeared in the suit by the physician, he was bound to make all the defense he had, and hence he is estopped by the fact that he had a defense of malpractice, of which he failed to avail himself. But if he has not appeared, any question of malpractice has never been adjudicated, and he is at liberty to assert his claim by an independent action."

From the authorities it is evident that under some circumstances the recovery by a physician for his fees is a bar to the recovery of damages by plaintiff. The question is for the profession to know when to interpose such a judgment in bar. If it is desired to avail oneself of this defense, it is necessary to set it up by special plea. In some instances it may be advantageous to a defendant in a malpractice suit: in other instances it may prove to be a dangerous privilege. It is a matter much disputed and little understood, and depends entirely upon the decisions of the state where the action is brought. It is necessary for the attorney representing the defendant in the action for damages to know exactly how far the courts will sustain either of the above theories, in order to make them available for his client.



State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

CONTROL OF CONTAGIOUS DISEASES.

Chapter 59 of the Laws of Nebraska of 1093 provides that the State Board of Health shall have supervision and control of all matters relating to the protection of the people of the state from contagious, infectious and epidemic diseases. It shall make careful inquiry into the cause of the various contagious, infectious, epidemic and endemic diseases, and shall take prompt action to suppress and control the same. The reports of births and deaths, the sanitary conditions of localities and of employments, the personal and business habits of the people and the relation of the diseases of beast and man shall be the subject of careful study by the board, and it shall make and enforce orders necessary to protect the people against diseases of lower animals. It shall collect and preserve such information as may be useful in the discharge of its duties, and for dissemination among the people. It shall be the duty of all boards of health, and of physicians in localities where there are no health authorities, or where such health authorities fail to act, to report to it promptly in the discovery thereof, the existence of Asiatic cholera, yellow fever, smallpox, scarlet fever, diphtheria, typhus and typhoid fever, and such other diseases as it may from time to time specify.

GROUND FOR REVOCATION OF LICENSE.

Chapter 61 of the Laws of Nebraska of 1903, amending section 14 of article I of chapter 55 of the compiled statutes, title "Medicine," provides that the board may refuse to issue a certificate or may revoke one already issued for any of the following

causes: The employment of fraud or deception in applying for license on diploma or in passing the examination provided for in this act; conviction of crime involving moral turpitude; habitual intemperance in the use of ardent spirits, narcotics or stimulants; unprofessional or dishonorable conduct. The words "unprofessional or dishonorable conduct," as used herein, are declared to mean: First, the procuring or aiding in procuring a criminal abortion; second, the obtaining of a fee on the assurance that a manifestly incurable disease can be permanently cured; third, betrayal of a professional secret to the detriment of a patient; fourth, causing the publication and circulation of advertisements of any medicine or means whereby the monthly periods of women can be regulated or the menses can be established, if suppressed; fifth, causing the publication and circulation of advertisements of any kind relative to diseases of the sexual organs tending to injure the morals of the public.

TEXAS CREATES A PASTEUR HOSPITAL.

Chapter 125 of the General Laws of Texas of 1903 appropriates \$5,000, or so much thereof as may be necessary, for the erection and maintenance of a Pasteur department for the treatment of hydrophobia in the state, in connection with and under the management of the state lunatic asylum at Austin. Any person affected with hydrophobia within the state shall be admitted for treatment on the certificate of a practicing physician and the recommendation of the county judge of any county. All indigent patients shall be treated and maintained at the expense of the state, but all non-indigent patients at their own expenses, or that of their relatives, friends or guardians. The laws pertaining to the introduction and control of such patients shall be the same as those of the Austin asylum.

RESTRICTION ON PRESCRIBING COCAIN, ETC.

Chaptain 115 of the General Laws of Texas of 1903, regulating the sale of morphine, opium, cocaine, chloral or any of the derivatives thereof, provides that any physician or person who shall give any prescription therefor to any person known to be a habitual user of the same, except in cases of actual sickness, shall be fined from \$25 to \$250. and may in addition be imprisoned in the county jail not exceeding six months.

TO PREVENT ABUSES IN VACCINATION.

Chapter 223 of the Laws of South Dakota of 1903 makes it unlawful for any board, physician or person to compel another by physical force to submit to vaccination with smallpox or other virus. No person shall prevent a child of school age, who furnishes a physician's certificate of successful vaccination within five years, from attending public school. The penalty for violation is imprisonment for not more than thirty days or a fine of not more than \$100, or both.

SCHOOL BUILDINGS TO BE DISINFECTED.

No. 132 of the Laws of Pennsylvania of 1903 states that, whereas, infectious and contagious diseases are very largely disseminated through the schools, from the want of proper disinfection of school buildings; therefore, it shall be the duty of the board of school directors, trustees, or other persons having control of any school or college building, to adopt and immediately put into operation a modern system, for the disinfection of such buildings; and to cause, at regular intervals of not exceeding two weeks, all of such buildings to be thoroughly disinfected. The system adopted shall be approved by the city board of health, or, there being no such local board, by the state board of health.—J. A. M. A.

PROVISION FOR COMMITMENT OF DRUG USERS.

No. 153 of the Laws of Pennsylvania of 1903 is an act to authorize and provide for the commitment of persons habitually addicted to the use of an intoxicating liquor or drug to a proper hospital or asylum, for restraint, care and treatment. The petition shall be accompanied by the affidavits of at least two physicians, based on examination by them of the alleged drunkard, setting forth his condition and stating that restraint, treatment, etc., in a hospital will be of benefit, which physicians must also appear at the hearing given the case. But the restraint shall not be continued in any case longer than one year, and all commitments shall be reviewable by proceedings under writ of habeas corpus, which may be sued out at any time. Furthermore, no person shall be committed, or be admitted into any hospital, etc., until payment has been made, or satisfactory security given, for the proper charges for board, treatment, etc.—J. A. M. A.

PROHIBITION OF MARRIAGE IN CERTAIN CASES.

The bill to prevent marriage of defectives, given in full on pages 788 and 789 of the Journal, March 21, 1903, is made chapter 220 of the Laws of Kansas of 1903, entitled, "An act regulating marriage and prohibiting marriage by or with persons afflicted with imbecility, feeble-mindedness, epilepsy or insanity, and prescribing penalties * * *" for violation of the act.

AUTHORIZES TEMPORARY PERMITS TO PRACTICE.

Chapter 358 of the Laws of Kansas of 1903 provides that the secretary of the State Board of Medical Registration and Examination may in his discretion issue a temporary permit to practice medicine or surgery to any person who shall have made application in writing to said board for license to practice, accompanied by the prescribed fee, and proof as required by section 3 of chapter 254 of the session laws of 1901, and who shall be a graduate of any legally chartered medical institution of the United States or any foreign country; or such permit may be so issued to any such applicant for license, complying with said conditions, who is shown to have been licensed by the board of registration and examination in any other state or territory of the United States or any foreign country whose standards of qualification for practice are equivalent to those of Kansas. Any such temporary permit so issued shall, when recorded in the office of the county clerk of the county in which he resides, authorize the person receiving the same to practice in the same manner as a permanent license up to the next regular meeting of the board; provided, that not more than one temporary permit shall be issued to any one person, nor shall any permit be extended beyond the time herein limited.

FOR SANITORIUM OF POOR CONSUMPTIVES.

No. 430 of the Laws of Pennsylvania of 1903 appropriates \$8,000 for the erection, fitting and maintenance for two years of a sanatorium for poor consumptives, on the state forestry reservation at Mont Alto, in Franklin or Adams counties, and authorizes the commissioner of forestry to make and enforce rules and regulations governing the same.—J. A. M. A.

THE STATE BOARD OF REGISTRATION IN MONTANA.

The Montana Legislature has passed two bills, one making a provision for appeals, which provides that all appeals against the decision of the Board of Medical Examiners shall be tried before a jury of six physicians, of which two, at least, shall be of the same school of medicine as the appellant. Thus this act takes the matter of professional conduct, standing, etc., out of the hands of the lay judges and jury. The second bill provides for reciprocity, and provides that applicants may receive a certificate and practice medicine in Montana if they present to the Board of Examiners a certificate from a Board of Medical Examiners from any other state recognizing the certificates from the state of Montana, which certifies that he has passed a proper examination, or is qualified to practice medicine in the said state, or, further, in such case that the applicant was exempt from examination by reason of his having resided in the said state in active practice at the time of the passage of the act, providing that applicants shall pass an examination.—J. H. W. R.

OSTEOPATHS AND VACCINATION.

The Ohio laws do not give osteopaths the authority to vaccinate.—J. H. W. R.

LEGAL RESPONSIBILITY OF PARENTS.

In England no adult is forced by law to consult a physician, so that it is only when children die without proper medical attention, that the question arises whether the guardians or parents of the child should be punished. There are two religious sects in England, the Christian Scientists and the Peculiar People, whose religious beliefs do not permit them to resort to medical aid in time of illness. During the last fifty years a number of members of the Peculiar People have been tried for manslaughter. At one time the law of England made it an offense not to provide medical aid to children, and in the event of death occurring without medical attention, the guardians could be convicted of manslaughter. But this law has been for some time repealed, and in 1894 the Prevention of Cruelty to Children Act has taken its place.



Medico-Legal Bulletin.



PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. 2

JANUARY 1904

No. 4

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

\$1.00 Per Annum

SUBSCRIPTION RATES

Single Copies 15c

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The passing of laws by the several State Legislatures providing for the reciprocal registration of duly qualified and licensed physicians and surgeons, is a question at present much agitated, and the benefits of which are recognized by the entire country. Many plans have been proposed, but all appear to only partially meet the situation. The prestige of the National Medical associations as well as the law-making power of the United States Congress has been invoked in vain. In the first instance the lack of co-operation between the different medical associations proved to be a stumbling block. In the second, it was soon learned by those sent to confer with the congressional committee that the National Congress had no power to pass a law regulating the practice of medicine throughout the several states of the Union, as that power was reserved to the states—this, on the ground that such powers were not granted to the National government by the constitution, or any of its amendments.

At first blush this last obstacle may appear to result from the folly of hair-splitting; however, on reflection, the impractica-

bility of a national law regulating the practice of medicine is apparent. The diversity of conditions and standards throughout this country is so great that to subject all communities to the same rigid standard which should be required of the practitioner in advanced and densely populated sections would be to deprive a considerable area of this land of the blessings of the "family physician." Certainly, the way to promote the cause of reciprocity is for each state to reciprocate registration with other states.

We print the following propositions, adopted by the American Federation of Reciprocating Examining and Licensing Medical Boards, as the basis of reciprocal medical registration, with the comments of W. A. Spurgeon, M. D.—Medical and Surgical Monitor.

(Medical and Surgical Monitor.)

"(a) That as a pre-requisite to registration, the applicant therefor shall file in the office of the board of the state of which he is a licentiate, such evidence as will enable the said board to certify that he is of good moral and professional character.

"Such certificate shall be filed with his application for reciprocal registration in another state.

QUALIFICATION NO. 1.

"(b.) That a certificate of registration showing that an examination has been made by the proper board of any state, on which an average grade of not less than 75 per cent. was awarded, the holder thereof having been at the time of said examination the legal possessor of a diploma from a medical college in good standing in the state where registration is sought may be accepted, in lieu of examination, as evidence of qualification. Provided, that in case the scope of said examination was less than that prescribed by the state in which registration is sought, the applicant may be required to submit to a supplemental examination by the board thereof in such subjects as have not been covered.

QUALIFICATION NO. 2.

"(c.) That a certificate of registration, or license issued by the proper board of any state, may be accepted as evidence of qualification for reciprocal registration in any other state. Provided, that the holder thereof was, at the time of such registration, the legal possessor of a diploma issued by a medical college in good standing in the state in which reciprocal registration is sought, and that the date thereof was prior to the legal requirement of the examination test in such state.

"Under the general basis of agreement set out in the foregoing, the various State Medical Boards operating under laws that provide for reciprocity, are expected to formulate the specific rules that are to obtain in their respective states, such as fees, supplemental examination, etc. It does not follow that because a state subscribed to the constitution of the Confederation it must waive any of its rights to determine specific conditions.

"Under this plan limited reciprocity is practicable, and the nearer the states can approach uniformity in their laws, the more general reciprocity can be made. Every state medical practice act should empower the state board to enter into reciprocal relations with other states. The Indiana law provides that the board 'shall have the power to make and establish all necessary rules and regulations for the reciprocal recognition of certificates issued by other states.'

"It does not follow that every applicant for reciprocal registration in the state shall be registered, even though he may come from a reciprocating state and be possessed of all documentary evidence of qualification. If the state board of the state to which he comes elects to do so, it may refuse to register him. Of course, no board will do this without cause. A state board may possess information or knowledge concerning an applicant not possessed by the board of the state from which the applicant comes. He may have been a former resident of the state to which he desires to return, and be better known there than in the state from which he applies. So all the reciprocating boards should concede to the board where registration is sought the right of arbitrary refusal in an individual case. This should be reserved by the state as a personal privilege; should not and probably will not be considered a breach of courtesy. Interstate reciprocity must of necessity be based upon confidence and executed in courtesy. To this end each state board should exercise the greatest care that incompetent and unworthy persons do not extend their field of operations through the advantages of reciprocity. Each state should keep and deal with its 'black sheep.' If this is done, if each state board will see to it that no unworthy person is recommended by it to another state, all objections to reciprocity will soon vanish, and all the advantage to the people that is claimed for reciprocity will soon obtain, and most of the state examining boards will take membership in the American Confederation."

THE LAW RELATING TO DOCTORS' FEES.

Under the heading, "The Law of Physician and Patient," William C. Tait, LL. D., in the Pacific Record of Medicine and Surgery several years ago, related the case of a physician who charged \$1,500 for a gastrostomy, and \$100 each for night detentions, and at the rate of \$100 each for sixty-two visits, making a total of \$9,200. The patient died. The executors offered to pay \$2,750. The doctor was willing to accept \$4,000. but this was rejected. A jury, after due trial, awarded him \$6,500, being \$1500 for the operation as charged, and \$60 each for the visits. The patient died worth \$250,000, which fact was shown by the doctor during the trial, despite strenuous objections by the lawyers for the defense. The judge held, that in a case of this kind, it was proper to show the patient's ability to pay, for upon this fact a physician was largely compelled to rely for proper and adequate compensation. He intimated that life and health were not wholly measurable in dollars and cents, a given amount of which would manifestly be of smaller moment to those who had much as compared with those who had little. It was also permitted to be shown that it is a general custom on the part of the medical profession to consider the financial ability of the patients, and this testimony was not contradicted.

Mr. Tait says: "It is the wealth of the patient which regulates the amount of compensation, as every professional man knows. In other words, professional charges are regulated by custom, not by law." He says that judicial decisions are rare in the matter of showing on the part of physicians a professional custom and usage of considering the financial ability of the patient in making charges. As a matter of fact, we would suggest that the common circumstances are such that the physician is compelled, much against his will and understanding, to consider the financial ability of his patient in charging, but against himself, making small charges, and shaving even these before he gets his pay, because of the poor circumstances of his patients. Why not, then, also work this rule occasionally in the other direction when there is an opportunity?

In the case of Czarnowsky vs Zeyer, 35 La. Ann., 796, the judgment of the lower court was increased to \$1,000 by the Appellate Court, on the ground that "The judgment of the lower court was disproportionate to the value of the decedent's estate, the inventory showing it to be over \$8,000." In the case of Lange vs. Kearney, 4 N. Y. Supp., 15, in refusing to cut down the physician's charge, the court said, "That although the sum demanded

by the plaintiff seemed to be large in contemplation of the defendant's income, nevertheless, it appeared that he was the owner of property, and could pay it, and had the ability to do so." Again, Mr. Tait says: "The several physicians of this city who were fortunate enough to attend the late Senator Fair during the last three days of his illness were allowed \$2,500 each for their services by the Probate Court of this city." How much would they have been allowed for the same services had they been rendered to the senator's valet?

In all kinds of professional services the law implies a promise to pay on the part of the person at whose request, or for whose benefit, they are rendered. Again, unlicensed practitioners cannot recover by law, despite a written promise to pay a fixed sum, or even on a promissory note, for professional services, because they are contrary to law, for no man can legally do that which is against the law, and invoke this same law in securing to him compensation for its violation.—Dietic and Hygienic Journal.

MALPRACTICE.

Every physician, no matter how large or how small his practice, is in constant danger of unjust suits of malpractice. The most skilled and eminent of the profession are annoyed by these suits. Malpractice suits seldom have any just basis, but are blackmailing or moneymaking schemes. Physicians, as a rule, give their patients their best work. The way to prevent malpractice suits, and to meet them if they occur, is to have a contract with the Physicians Defense Co., of Fort Wayne, Ind. This company does not pay judgments, but spends its money, to the extent of \$5,000.00 on any one case, if necessary, in providing defense. Defense and vindication of reputation are what the doctor wants. Many of the best men in the profession are enthusiastic supporters of the methods of this company. Dr. Chas. A. L. Reed, of Cincinnati, ex-president of the American Medical Association, writes to the company:

"Messrs. Wilson & Wilson, your attorneys, in the case of Hutchinson, Admr., vs. Reed, have advised me that the case has been dismissed for want of prosecution and at the instance and the expense of the plaintiff. This very satisfactory termination of a very disagreeable incident affords me the opportunity, which I very gladly embrace, to testify to the promptness, faithfulness and the fidelity with which you have protected my interests.

"When the case was instituted you immediately took the

entire matter off my hands, employing my own attorneys, whom I recognize as among the ablest at the Cincinnati bar, and from that time to the present, I have been spared every unnecessary annoyance of the successful defense of a case out of court. Your attorneys left no stone unturned, having investigated the character of the plaintiff, his professional standing, his social relations and his own connection, personal and professional, with the case. The depositions taken at the instance of the plaintiff, were so skillfully managed by your attorneys that when submitted to the distinguished local counsel for the plaintiff, the latter was prompted to advise the dismissal of the proceedings.

"I feel that if all malpractice proceedings could be defended by you and with the extreme skill manifested in the conduct of this case, members of the profession would be less frequently subjected to the disastrous annoyance of newspaper publicity incident to sensational trials. I cannot too heartily commend your enterprise to every member of the medical profession."—
From the Wisconsin Medical Reporter, December, 1903

THE EVILS OF PUBLISHING CRIME.

Whatever may be the advantages of publishing the legal consequences of crime, either by the reports in the newspapers, or by the publicity which comes from opening the court rooms to the indiscriminate public during criminal trials, there are important evil consequences which must outweigh the possible lessons that are learned by observing criminals brought to justice. If we examine the consequences of a long trial of a person accused of poisoning another, with the long cross-examinations, the conflicting expert testimony, the long rehearsals of the details of the crime, the vulgar curiosity to observe the manner and appearance of the accused, some idea may be obtained of the effect of all this upon hearers who are composed of persons with all grades of intelligence, and who are often morally latent criminals. It is much better that a certain class, the members of which frequently attend criminal trials, should remain in ignorance of the action of drugs, and the post-mortem changes that follow their administration. The court room often offers a veritable criminal education, and is a school where many latent criminals learn their fatal lessons. It would be far better if, in such trials, the court room door should be closed against the general public. The same can be said of the fatal consequences of publishing the details of these trials in the papers.

LUNACY LAW.

Under this heading the Medical Press, April, 1903, page, 355, publishes an editorial in which it refers to papers read before the Medico-Psychological Association of Great Britain and Ireland, at the instance of Sir William Gowers and Dr. Ernest White. The important question seems to lie in the stigma which follows one who has been unfortunate enough to have been treated in an asylum. The term "mental hospital" should be applied when speaking of an asylum. It is believed that if this term were adhered to religiously the supposed stigma would not again be heard of. A patient treated in a general hospital has no stigma attached to him; why, then, should one be attached to a patient who has been treated in a mental hospital? There is no sharp line between diseases of the body and of the mind, and in mental cases there is often more indication for the attention of the physician than for mental treatment. The stigma which formerly was attached to tuberculous patients is now rapidly disappearing, and there is no reason why in the future the same should not be true of cases of insanity. It is regrettable that general practitioners encourage this unnatural sentiment among the laity by treating insane patients in private dwellings, a fact which militates against the patient's chances of recovery. He diagnoses the case as neurasthenia, and continues to delude the family of the patient until the symptoms of insanity become so pronounced that it is impossible to disguise the character of the case any longer. This is a condition which should not exist at the present stage of psychologic medicine. The establishing of real hospital wards in mental hospitals has done a great deal to remove the prejudices among the laity against such institutions. If terms such as "asylum," "lunatic," etc., were abolished, it would not be very long before the attitude of the public toward mental hospitals would be much more favorable. When the prejudice against consulting the physician for mental symptoms can be removed, the preventative treatment of insanity will have made considerable progress. The suppression of symptoms also is a serious obstacle in the treatment of mental disease, for it is most important that the history of the disease should be fully known to the physician. The editor expresses the hope that the public will view these matters in their true light, and that the prejudices will soon disappear.—J. H. W. R.

SYPHILIS AND DIVORCE.

Morrow gives a digest of the legal status of syphilis and divorce, and advises that under the present conditions of law, syphilis should never be invoked as the cause of action, unless it constitutes the chief or only phase of cruelty that can be alleged. The proceedings had better by far be based on charges of infidelity if they can be sustained. The inconveniences to the applicant to prove the facts for divorce are very serious and should be avoided if possible. Still there are many cases of marital infection of such aggravating character that it may be the only resource. There are so many loopholes of escape for the guilty party from the interpretation of what constitutes "willful and knowing" communication, and so many extenuating circumstances that may be pleaded, that the existing laws are not adequate. He would advise the physician not to appear in the interest of the patient, but let the proof of the communication of the disease be furnished by a medical expert appointed by the court, and especially, he says, should the attending physician avoid giving a letter or certificate as to the existence of syphilis in the plaintiff and his treatment of it. Certificates of this character are looked on with suspicion and may be rejected by the courts. J. A. M. A.

THE DOCTRINE OF SURVIVORSHIP.

Theodore Sutro, in discussing the Fair accident in France, reviews the subject of the presumption of survivorship. The Roman law, A. D. 533, presumed that when father and son died together in battle or shipwreck that the son outlived the father if he was above the age of puberty, but died first if under that age. When two or more under the age of 60 years died, the youngest one survived; if under the age of 50 years, the oldest survived. The presumption was that the man survived if a man and woman died together in an accident. This same principle existed in the Code Napoleon in France, and is in operation in Italy, Spain, and Greece, at the present time. In Prussia, Austria, and Holland, the presumption is that death was simultaneous. In the United States, with the exception of Louisiana, where the Code Napoleon exists, the presumption is that death was simultaneous.—J. H. W. R.

Judicial Decisions.



Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

DOCTOR-DENTIST.

The Supreme Court of North Carolina handed down two opinions recently of much interest. In one the physicians of the state loses and in the other the dentists won. The conviction of Andrew C. Biggs, of Greensboro, for practicing medicine without a license, was held by the Supreme Court to have been under an unconstitutional act, while in the other Mr. Eubanks, who wants to practice dentistry without a state board license, loses.

Andrew C. Biggs, who was indicted in Greensboro for practicing medicine and surgery without a license, has gained his case in the Supreme Court. "Dr." Biggs held himself out to the public to cure disease by a system of drugless healing, but is not an osteopath. He was convicted in the Superior Court and appealed. The appeal to the Supreme Court called in question the validity of chapter 697, of the Acts of 1903, which defines what the practice of medicine shall be construed to mean. The court held that the act is unconstitutional for the Legislature to prescribe that the practice of medicine and surgery should be construed to mean the treatment of diseases without medicine or surgery; that the Legislature could no more do this than it could describe that two and two should make five, because it cannot alter a physical fact.

Dr. F. W. Eubanks, of Hendersonville, originally from South Carolina, was granted temporary license, by a single member of the Board of Dental Examiners of North Carolina to practice dentistry in North Carolina, and then upon examination of the entire board he was refused a license. He brought suit against the Board of Examiners to compel them to issue him license and to produce his examination paper, the plaintiff alleging that his proficiency would appear from such paper and that he was a graduate in dentistry from the Baltimore Medical College. The case was decided against him in the Superior Court and the judgment was affirmed by the Supreme Court on appeal.

QUALIFICATION PRESUMED—RIGHT TO SUE FOR SERVICES.

The Appellate Court of Illinois for the Second District says, on the appeal of the County of Jo Daviess vs Staples and others, an action brought by the latter to recover for the performance of a surgical operation on a resident of East Dubuque, Ill., taken therefor to a hospital in Dubuque, Iowa, that it was averred that the parties suing were "legally qualified to practice medicine and surgery at the time when and place where said services were rendered." As just stated, the services were rendered in Iowa. There was no proof whether the statutes of Iowa required any license to entitle a person to practice medicine and surgery in that state, or prescribed any prior test of any kind, nor that the parties suing had taken out any such license or complied with any such requirement. On the part of the county it was insisted that for failure to prove that allegation the verdict rendered for the parties suing could not stand. But the Appellate Court holds otherwise. A plea of tender which was made was an admission of the parties' right to sue for the sum tendered. While it was held in *City of Chicago vs. Honey*, 10 Ill App., 535, that in this state an unlicensed physician can not recover fees for his professional services, yet the current of judicial decision in this state appears to be that in a suit for such services a license or due qualification under the law will be presumed. But the laws of Iowa were not proved, and in the absence of proof it is presumed that the common law prevails in a sister state. At common law a surgeon can recover for his services. In *Chitty on Contracts*, 11th Am. Ed., 836, it is said: "Where there is no restraint imposed by statute, physicians and surgeons in the American states have the same right as others to the benefit of that great principle of the common law that when services are performed on request, and no special agreement is made in reference to them, the law raises an implied promise to pay so much as the person performing them deserves to have, and an action lies on such promise.—J. A. M. A.

AN EDDYITE CASE.

The Court of Appeals in Ontario upheld the decision of the lower court, who found a man guilty of manslaughter who permitted his son to die of diphtheria without providing proper medical treatment. The boy had been under the care of an Eddyite.—J. H. W. R.

SEAMEN ENTITLED TO MEDICAL CARE AT EXPENSE OF SHIP.

The Supreme Court of Washington says, in the personal injury case of *Sanders vs. The (Simson Mill Company*, that the authorities sustain the contention that under the maritime law a seaman who receives an injury while in the service of the ship is entitled to medical care, nursing and attendance, and to a cure, so far as is possible, at the expense of the ship, regardless of whether or not the condition of the seaman is brought about by the negligence of the owners of the ship, or is the result of disease or accident. But this does not go beyond expenses incurred in getting well. And it has been frequently decided that it makes no difference whether the medical attendance was on board the ship, or whether the party requiring the attendance had been removed to some other place. The action may be brought either in the federal or state courts. In the case of *Holt vs. Holt vs. Cummings*, 102 Pa., 212, the action was brought by the physician who waited on the disabled seaman, an engineer of a tugboat employed in the Delaware river.—Exchange.

LIMITS SALE AND PRESCRIBING OF COCAIN.

No. 122 of the Laws of Pennsylvania of 1903 provides that no person shall sell, furnish or give away any cocaine, or any patent or proprietary remedy containing cocaine, except on the prescription of a registered practicing physician, or of a dentist, or of a veterinarian: nor shall any such prescription be refilled; nor shall any physician, etc., prescribe cocaine, etc., for any person known to him to be a habitual user of cocaine. The penalty is a fine of \$100 or less, and imprisonment for six months, or less, both or either, at the discretion of the court. J. A. M. A.

EXPERT EVIDENCE IN REGARD TO TIME OF DEATH.

The Supreme Court of Utah holds, in the murder case of *State vs. Mortensen*, that there was no error in admitting the testimony of a physician relating to the probable length of time which intervened from the time the deceased had eaten his supper until his death, as indicated by the appearance of the contents of the stomach and the stage of digestion, the witness, as an expert, having made an examination of the stomach of the deceased.—J. A. M. A.

FURNISHING MEDICAL TREATMENT BY EMPLOYER.

The Court of Civil Appeals of Texas says, in *Galveston, Harrisburg and San Antonio Railway Company vs. Hennigan*, that while, independent of a contract, no duty rests on a master to furnish his servants with medical and surgical treatment, yet, if he undertakes to furnish such treatment, the law imposes on him the duty to use reasonable care in engaging the services of a competent and skillful physician and surgeon for that purpose. And if, through his failure so to do, the physician employed is incompetent and unskillful, and through such incompetency, etc., in the treatment of the servant injures him, the law holds the master responsible for his failure to discharge the aforesaid legal duty. Such liability is independent of any duty arising from a contract.—Exchange.

PHYSICAL EXAMINATIONS IN OKLAHOMA.

The Supreme Court of Oklahoma holds, in *City of Kingfisher vs. Altizer*, that the courts of that territory can not order a party bringing an action for an injury to the person to submit to a surgical examination in advance of or during the trial of the cause. It says that one may expose his body, if he chooses, with due regard to decency, and with the permission of the court; but he can not be compelled to do so in a civil action without his consent. Where a person unreasonably refuses to show his injuries when requested to do so, that fact may be considered by the jury as bearing on his good faith, as in any other case of a party declining to produce the best evidence in his power and under his control.—Exchange.

LEGAL RESPONSIBILITY OF THE GUARDIAN WHEN THE FATHER IS LIVING.

The Appellate Court of Indiana, Division No. 2, in the case of *Leach vs. Williams*, decided that the guardian of a minor is not liable for medical services rendered to the minor when the father is living and able to support him, and in the event that the guardian had made no contract to pay for such services.—J. H. W. R.

QUARANTINE UPHELD BY THE COURT.

Judge Davis, of the Court of Sessions of Philadelphia, dismissed a writ of habeas corpus which was brought to obtain the liberty of Norman R. Hyland and his family, who were under quarantine at their home. It was claimed that they were starving to death, and the attorney demanded that he man be permitted to go out and work, or that the city should provide food for the family. The man had refused to permit one of his children, who was suffering from smallpox, to be removed to the Municipal Hospital, and the Board of Health justified its actions by the fact that the city provided a hospital for such cases. Judge Davis stated that the case was narrowed down to the question as to whether the city had the privilege of quarantining the house, and this right it had by the act of 1888.—J. H. W. R.

ANTI-TOXIC SERUM IN MORPHIN POISONING.

Leo Hirschclaff experimented upon dogs and mice in an effort to discover an anti-serum which was effectual in combating poisoning by morphin. He found that by injecting increasing doses of this drug into animals there developed in the blood of these animals something which, when injected into other animals, protected them against acute poisoning by fatal doses. He employed this serum in a case of morphin poisoning in a man, with success. Camphorated oil, atropin, coffee, camphor-ether, and lavage of the stomach were also used. The serum was employed in cases of chronic morphinism with encouraging results. Hirschclaff states that at no time was there the slightest local or general reaction observed.—J. H. W. R.

REQUIREMENTS FOR PRACTICE OF OPTOMETRY.

Chapter 48 of the Laws of Nevada of 1903 provides that any person engaging in the optical profession in correcting ocular, muscular imbalances, errors of refraction, or other defects of vision, not requiring surgical treatment, shall apply to the state controller for a license and shall produce a certificate of graduation, and shall make affidavit that he is the person named therein, and that such certificate has been issued by a regularly chartered college, authorized to confer degrees, etc. The fee for a license is \$10. Nothing in this act shall be construed as applying to regularly qualified medical practitioners, nor to persons who have been engaged in the optical profession in the state for one year preceding the passage of this act.—J. A. M. A.



Medico-Legal Bulletin.



ORIGINAL ARTICLES

LIABILITY OF PHYSICIANS AND SURGEONS FOR ACTS OF OTHERS.

At this time, when the work of the medical profession is becoming so systematized and departmentized, and many physicians and surgeons are placed under the supervision and direction of others, a discussion of the liability of the physician for the acts of others, and the liability of others for his acts, may be of some interest to the profession in general.

The proposition that a physician or surgeon is liable for the acts of his agent, assistant, or those acting under his direction, is well established. The question of agency, however, in this, as in all other instances, is a question of fact, and is not so easily determined. We set forth several decisions of courts of last resort in an endeavor to show how the courts have construed certain facts. *Ludlow vs. Humphrey*, 50 Conn., 209, is one of the leading cases. In this case the defendant, the physician, contracted with the town board that he would vaccinate certain citizens, for which services he was to receive, and did receive, a certain compensation stipulated in the contract. The defendant hired one Sprague to do the work in his place. Sprague attempted to vaccinate the plaintiff and did it in such a careless and negligent manner that great injury ensued. The court instructed the jury as follows: "That if they were satisfied from all the evidence that Sprague was the agent of the defendant in vaccinating the plaintiff: that she was materially injured by the vaccination, and that in the operation there was either carelessness or want of ordinary diligence, care and skill, their verdict ought to be for the plaintiff."

Wilkins vs. Ferrel, 30 S. W., 450, the defendant, a dentist, had another employed to assist him in his work. The employe negligently extracted a tooth, and suit was filed against the dentist for damages. The court stated the following proposition:

"The extraction of plaintiff's tooth having been performed by someone other than the defendant, the latter is not liable for any injury thereby, unless he had control over such other person's acts in the premises, or unless, being called upon to do the work, the defendant directed it to be done by such person under circumstances which would justify a prudent man in believing that the person so directed was defendant's employe, or unless defendant held out to the public that other dentists in his office were his assistants, and plaintiff relying on such representations, submitted himself to one of such dentists looking to the defendant alone as a responsible head of the business."

The proposition of law laid down in *Hitchcock vs. Bengett*, 38 Mich., 561, agrees with the above statement and is as follows: If a family doctor or railroad surgeon on leaving town recommends that in case of need a certain other physician can be called, such recommendation does not make him liable for injuries resulting from the unskillfulness or neglect of such recommended physician.

In the case of *Meyers vs. Halborn*, 58 N. J. L., 193, 55 Am. St. Rep., 606, the facts were as follows: Appellant was engaged by the appellee to treat her in case of sickness. After an examination appellant concluded that his services would not be needed, and left the city on a three days' vacation. Before leaving however, he instructed Dr. P. that in case a call would come from appellee's house, he, Dr. P., should respond. The appellee called the appellant by telephone, and in response to such call Dr. P. came and stated that appellant had left the city, and that he represented him. He then proceeded to treat appellee without any objection, through which treatment it was alleged appellee was harmed because of the negligence and unskillfulness of Dr. P. Suit was instituted against appellant on the ground that Dr. P. acted as his agent. The court said: "Dr. P. and the appellant were each of them practicing physicians of this state. Dr. P. was attending the patients of the appellant while he was temporarily absent. Even if admitted, therefore, that Dr. P. was employed by the appellant to attend appellee, that fact did not render the appellant liable for his neglect or want of skill in the performance of his services; for an examination of the authorities will show that the party employing a person who follows a distinct and independent occupation of his own is not responsible for the neglect or improper acts of the other."--*DeForrest vs. Wright*, 2 Mich., 268.

The last quoted proposition appears to be the basis upon

which the responsibility of physicians and surgeons for the acts of others is predicated. The following decisions appear to be based upon that theory. "A physician is not liable for injuries resulting from too great heat in a bath which he has ordered for a patient and left to the nurse to be administered, if he was not present and did not assist in preparing the bath."—*Perwinsky vs. Freman*, 4 Fost. and F., 997. "A physician is not liable for the results of carelessness of nurses unless his own carelessness contributed to the injury."—39 Mo. App., 233. "A physician is not liable for the negligence of nurses in a hospital where the patient is placed, over whom he has not control."—155 Mass., 333.

Each member of a partnership of practicing physicians is liable for the acts of any one, or all. In *Hyne vs. Erwin*, 23 S. C., 226, 55 Am. Rep., 15, we find the following proposition: "In a partnership the parties associated are in one sense agents of each other, and the act of one in the scope of the partnership business is the act of each, or all, as fully so as if each were present and participated in all that was done, and each guarantees that within the scope of the common business reasonable care, diligence and skill shall be displayed by the one in charge; or at least, that a failure on the part of one thus to exercise such reasonable care, diligence and skill is a failure, in law, of each and all; and an injury resulting from such failure is the act of all. When, however, the injury results from a wanton or willful act of one of the parties, committed outside of the agency or common business, and not from negligence or the failure to bestow reasonable care, diligence and skill within the agency, then a different principle applies, to-wit—that the party doing the act and causing the injury is alone responsible. We find an interesting discussion as to the liability of partners for the acts of each other in *Hess vs. Lowrey*, 122 Ind., 225, 17 Am. St. Rep., 355. This action was originally instituted by Isaac Lowrey against L. W. and F. C. Hess to recover damages for an injury sustained to the person of the plaintiff, which injuries were alleged to have been caused by the negligent and unskillful manner in which the defendants (who were partners engaged in the practice of medicine and surgery), re-set and treated the plaintiff's shoulder. Pending the action L. W. Hess died, and the case proceeded to judgment against his personal representatives and surviving partner, jointly. The court, however, decided even though the action was in form *ex contractu*, since the principal or only damages sought to be recovered grew out of the injury

to a person, the action would not survive against the personal representatives of the deceased partner.—99 N. Y., 258 52 Am. St. Rep., 25; *Ott vs. Coughman*, 68 Md., 56. The nature of the damage sued for and not the nature of its cause determines whether or not the action survives.

The question now presented is whether or not the action, having abated against the estate of the deceased partner, can be prosecuted to judgment against the survivor. The liability of partners for the torts of each, if committed within the scope of the partnership business, is well settled. When the damages sued for arise out of an injury to the person of the plaintiff, the cause of action dies with the person of either party; but the cause of action only dies so far as it affects the liability of the decedent, or his personal representatives. Neither by common law nor under the statute does the cause of action die as to the surviving partner, or defendant, who remains liable for all claims against the firm. *King vs. Bell*, 13 Neb., 409; 8 *Wait's Action and Defenses*, Sec. 502; *Shale vs. Schantz*, 35 Hun., 522. The fact that the cause of action died as to *L. W. Hess* does not at all affect the question of the right of contribution growing out of the partnership relation, and rests upon the implied obligation of each partner to contribute in proportion to the liquidation of all partnership liabilities, unless the liability arose out of an intentional tort committed by the partner asking for contribution. From every point of view the conclusion follows that the cause of action did not die as to both partners because one member of the firm died, and that the proceeding to judgment against this survivor was not of itself an error.

Another proposition of law growing out of the relation of agency is as follows: A corporation, such as a railroad company, employing a physician or surgeon of ordinary competency and skill to care for employees and others injured in its service, is not liable for the carelessness, negligence or malpractice in the performance of his professional duties toward such injured persons placed in his charge by the company.—55 Am. St. Rep., 608; *Quinn vs. Raway*, 94 Tenn., 713; 45 Am. St. Rep., 676; *Pittsburg Ry. Co. vs. Sullivan*, 141 Ind., 83; 56 Am. St. Rep., 313. In the last cited case the court says that in discussing the question, the appellant (Ry. Co.) was engaged in the business of common carriers, and the presumption must, at least, be that it was engaged in that business alone, and such other as was necessarily incident thereto or connected therewith. The acts complained of are in no manner governed by the law which

applies to the omission of the master to provide his employees with safe machinery and appliances. This is a duty enjoined by law and one which he cannot delegate so as to exempt himself from liability by casting it upon an agent, officer or servant employed by him.

As the question of appellant's liability presented by the facts does not come within the scope of, nor is it controlled by, the general principal just stated, hence if there is any liability it must result from the application of a rule more limited in its character, and one under which the principal of respondeat superior in a more narrow sense can be applied. In *Quinn vs. Ry. Co.*, the court said: "For the relation to exist, so as to make the master responsible, he must not only have the power to select the servant, but to direct the mode of executing, and to so control him in his acts in the course of his employment as to prevent injury to others." The result is that the doctrine respondeat superior has no application to this case. The only contract the law implies here is the agreement upon the part of the company to use reasonable care to select and obtain careful physicians and careful attendants; and, if the company performed that contract, it was responsible no further.

The same rule obtains in the case of hospitals. A public hospital or a private charity hospital is liable for the tort or negligence of an officer or servant only when such corporation has been guilty of negligence in selecting such officer or servant. When the corporation has exercised due and reasonable care in the original selection of the offending officer or servant, it is not liable for his subsequent act, unless prior to the occurrence of such act knowledge of the unfitness and incapacity of such officer or servant was communicated to and fully brought home to the corporation. *Dwains vs. Harper Hospital*, 101 Mich., 555; 45 Am. St. Rep., 427; *Benton vs. City Hospital*, 140 Mass., 13; 54 Am. Rep., 436.

A question of great interest is suggested by the above proposition. Why should not the same rule apply to a physician who has selected another physician to do his work? Can a physician be held for the acts of another physician acting in his place and as his representative, beyond the use of proper care and diligence in selecting such physician? According to *Meyers vs. Halborn*, above quoted, we are inclined to think that he could not, and in view of the other authorities it would appear that such is the law, to what extent, however, this would apply to agents and assistants suggests an interesting question.



State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

MEDICAL JURISPRUDENCE SOCIETY.

On Monday evening, November 16, the Medical Jurisprudence Society of Philadelphia, after several years of inactivity, resumed its meetings, with Dr. Henry Leffman, secretary pro tem., in the chair. Dr. Solomon Solis Cohen read a paper on "Judicial Determination of the Cause of Death." Dr. Cohen severely criticised the present system and considered the Massachusetts system, although by no means ideal, still an advance. He recommended a plan of which the following is a brief summary: (1) The cause of death to be determined by a jury of experts consisting of a pathologist, bacteriologist, chemist, medical or surgical practitioner of admitted ability, neurologist, etc. (2) This jury, sitting in an open court, be empowered to review the post-mortem, chemical, bacteriological and other examinations, hear testimony bearing upon the symptoms preceding and leading to death, review any evidence bearing upon the cause of death, and submit an opinion or opinions as to cause of death formulated in the shape of a report, or majority and minority reports, for the consideration of the lay petit jury before which the case will be tried. The paper was followed by an interesting discussion, in which the lawyers very clearly indicated that Dr. Cohen's plan was not feasible under existing conditions, and the medical men present expressed the belief that it is doubtful whether a jury could be secured that would submit an unanimous opinion, and one lawyer believed that if such an opinion were submitted no jury would believe that it had been reached by legitimate and trustworthy methods. The society will meet about four times yearly; the next meeting will be January 18, 1904, at which time permanent officers will be elected.

THE LAW AND THE DOCTOR—OPINIONS OF THE ATTORNEY GENERAL OF ILLINOIS.

(1) Only those who are authorized to practice medicine and surgery in all their branches have the right to advertise themselves as "doctors." (2) A smallpox patient must be taken care of by the county in which he falls sick, and medical attendance, care, food and supplies must be supplied at the county's expense, regardless of any rules or provisions made by the county which may conflict with this law. (3) Those who were illegally practicing medicine prior to the passage of the medical practice act of 1899, which act repealed the laws which these practitioners were violating prior to that act, are still practically illegal and are subject to fines and punishments. (4) A town or city has jurisdiction over land lying within one-half miles from its corporate limits for purposes of quarantine, even though this land may lie within another municipality. On this land the municipality may build and maintain smallpox hospitals, regardless of the protests of other municipalities, provided that such action shall not interfere with the action of other municipalities in carrying out the same quarantine work. (5) While the officers of the law in counties and cities are supposed to prosecute violators of the quarantine laws, there is no penalty for those who fail to do so. (6) The expense of registration of births and deaths should be paid by the county treasurer, according to the law. The law is valid. (7) Insane asylums need not have registered pharmacists.—Exchange.

ARKANSAS—AGAINST UNPROFESSIONAL AND IMMORAL CONDUCT.

Act 178 of the Acts of Arkansas of 1903 provides (Sec. 1), that any physician, surgeon or person practicing medicine who shall employ any solicitor, or drummer, or shall subsidize or employ any hotel or boarding house, or advertise his business or remedies by untruthful or improbable statements, circulars or cards, or who shall obtain any compensation by any assurance that a manifestly incurable disease is curable, or who shall wilfully expose any professional secret learned from his patient, to the detriment of the patient, or who shall become a habitual drunkard and continue the practice of medicine, etc., or who shall administer any medicine or perform any operation while drunk, shall, on conviction, be punished by a fine of from \$25 to \$200, and by a revocation of his license. Section 2 provides that whenever any practitioner shall be convicted of any mis-

demeanor, involving moral turpitude, in addition to any other penalty shall be added a revocation of his license. Section 3 provides that if any practitioner shall commit the crime of abortion, or aid therein (provided this section shall not apply to any abortion produced by any regular practicing physicians to save the mother's life), he shall be adjudged guilty of a felony and punished by imprisonment in the penitentiary for from one to five years, and his license shall be revoked. Section 4 provides that any practitioner whose license is thus revoked may appeal, but shall not practice pending the appeal, and that if he does so practice, or attempt to offer to do so, he shall be punished in the same manner and to the same extent as if he had never had any license to practice. Section 5 provides that after one year from the date of the revocation of his license for these causes a practitioner may ask for and receive a new license, if he shall satisfy the board that he is qualified, has reformed and is worthy.

KEEPING REGISTRY OF BIRTHS AND DEATHS WITHOUT PAY.

Sections 2582 and 2583 of the Kentucky statutes of 1899 make it the duty of all physicians, surgeons and midwives to keep a registry of all births and deaths which they have professionally attended, and to report them to the county clerk. In the case of *Commonwealth vs. McConnell*, where there was an indictment for non-compliance with these requirements, it was urged that the statute was unconstitutional, because it required physicians to perform a service without compensation, and that the Legislature had no power so to do. But the Court of Appeals of Kentucky does not think the statute unconstitutional on that ground and affirms that the Legislature has authority to require said duties.

MASSACHUSETTS—PRACTICE OF DENTISTRY BY PHYSICIAN.

Chapter 219 of the Acts of Massachusetts of 1903, entitled, "An act relative to the practice of dentistry," amends Section 29 of Chapter 76 of the revised laws so that it reads: The provisions of Sections 24 to 28, inclusive, shall not apply to a physician registered under the provisions of this chapter "and in actual practice as a physician, in cases where he deems immediate treatment necessary for the relief of his patients," etc., the amendment consisting of the insertion of the words inclosed in quotation marks.—Exchange.

MICHIGAN—PROHIBITS EXHIBITIONS OF THE DEFORMED ETC.

No. 103 of the Public Acts of Michigan of 1903 provides, under penalty, that it shall be unlawful for any physician or other person to expose or keep on exhibition any human monstrosity, or any diseased or deformed human bodies, or parts or representation thereof, which would be indecent in the case of a living person, except as used for scientific purposes before members of the medical profession or medical classes.

MASSACHUSETTS—FORBIDS FURNISHING LIQUOR AT HOSPITALS.

Chapter 410 of the Acts of Massachusetts of 1903 provides that whoever gives, sells or delivers spiritous or intoxicating liquor to a patient of the Massachusetts Hospital for dipsomaniacs and inebrites, or of any of the state hospitals for the insane, or to a patient under the control of any of said hospitals, except under the direction of a physician of the hospital, and whoever has in his possession within the precincts of any of said hospitals, any such liquor, with intent to convey or deliver it to any patient thereof, except under direction as aforesaid, shall be punished by a fine of not more than \$50 or by imprisonment for not more than two months.

MICHIGAN—PROVISION FOR PREVENTION OF RABIES.

No. 116 of the Public Acts of Michigan of 1903 provides that whenever it shall be proved to the satisfaction of the local board of health that any indigent person within its jurisdiction has been bitten by a rabid dog, or other rabid animal, or in any other manner has been infected with the virus of rabies, said board shall make the necessary arrangements and send said person to the Pasteur Institute at the University of Michigan. The necessary expenses thus incurred shall be a charge on the township, city or incorporated village in which the expense was authorized. Before their payment or allowance all bills for such expenses shall be audited by the local board of health.

RIGHT OF WAY FOR PHYSICIANS.

The City Council of Kansas City, Mo., has passed an ordinance giving the right of way through funeral and other processions of ambulances, hospital corps and physicians' private carriages.



Medico-Legal Bulletin.



PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. 2

FEBRUARY 1904

No. 5

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

\$1.00 Per Annum

SUBSCRIPTION RATES

Single Copies 15c

ADVERTISING RATES FURNISHED UPON APPLICATION. Non-ethical advertisements will not be received, the publishers reserving the right to reject and discontinue any advertisement at any time.

EDITORIAL NOTES

A case of unusual interest to the medical profession was decided on January 8th, 1904, by the Supreme Court of Minnesota--Henslin vs. Wheaton, et al. The action was by the appellants against the appellee for damages caused by X-ray burns, the facts in brief being as follows: The plaintiff was under the impression that he had inhaled into his lungs the gold crown of one of his teeth, and for the purpose of locating the substance, called on the defendants for the purpose of receiving medical advice and treatment. The defendants exposed his person to the X ray and took two skiagraphs in an endeavor to locate the substance, which were fruitless. The plaintiff felt no immediate consequences of the treatment, but after a period of time he felt severe pains upon his back and was advised that he had received what is known as an X-ray burn. The usual allegations were made in the plaintiff's complaint, charging unskillfulness, etc. On the trial, the plaintiffs called a certain professor as an expert witness, who testified that he was familiar

with electricity and the use of the X-ray machine. The plaintiffs sought to show by this witness that it was negligence to apply the X-ray to the person of the patient with the tube only two inches from the body and the extent or degree the flesh would be affected is determined by the nearness of the exposure, and also that nearness of the exposure was likely to cause and X-ray burn, when if further removed such would not result; in short, the testimony of the witness, if received, would tend to show unskillfulness and negligence on the part of the defendants. On the objection of the defendants, the lower court excluded the evidence; applying the rule, in *Martin vs. Courtney*, 75 Minn., 255, so well established; that a physician must be judged by the standards of his own school of medicine and for this reason members of a different school cannot be introduced as expert witnesses touching upon the skillfulness, etc., of the treatment administered. The Supreme Court, however, decided that this rule does not apply in the case at bar and reverses the decision of the lower court, saying in part as follows: "The application of the X-ray to plaintiff was not for the purpose of treating any disease or ailments from which he suffered, but for the purpose of locating, if possible, a foreign substance thought to be in his lungs. While it perhaps may in some instances be used as a remedial agent, it was not so employed in this case. The so-called X-ray, discovered by Roentgen, has been recognized and known to scientists, both in and out of the medical profession, for some eight years. During this time the apparatus for the generation of X-rays has been used very generally by electricians, etc., for experimental and demonstrative purposes. It is a scientific and medical appliance, the operation of which is the same in the hands of the college professor or the physician of the allopathic, homeopathic or any other school of medicine. It may be applied by any person possessing the requisite scientific knowledge of its properties, and there would seem to be no reason why its application to the human body may not be explained by any person who understands it. The rule in the *Courtney* case, therefore, has no application to the case at bar. It might apply, if it appeared that the application of the X-rays to plaintiff's person was for medical purposes, and not for the scientific purpose of discovering the presence of foreign substances in his lungs."

It appears to us, however, that in the above case there was a fixed scientific and medical question, the claim for damages was certainly predicated upon the negligent use of the

X-ray machine as applied to the plaintiff's person. No doubt the scientist could testify to the use and properties of the X-ray, but we do not see how he could qualify as an expert witness to testify as such in a case where the only question involved was the skillful or unskillful application of the X-rays to the person of the plaintiff. As is stated in this case, the defendants conceded that some bodies were more susceptible to the influence of X-rays than others and, regardless of the distance of the apparatus from the person of the patient, X-ray burns may or may not result. If the physician, therefore, is to be judged by the standards of his own school, we fail to understand how a scientist, not a physician, could be qualified as an expert witness.

Another phase of this question occurs to us in this way: From the report of the case we gather that the application of the X-ray machine to the plaintiff's person was for the purpose of diagnosis and was made by men who held themselves out as practicing physicians and surgeons. Evidently the plaintiff went to the defendant because they were physicians and surgeons and for the purpose of obtaining relief. In other words, the treatment he was to receive was "therapeutic" in its nature, and the skill, etc., used in applying the same should be judged by the standards of the physician's own school.

Some time in the latter part of 1903 our competitors, the Casualty Insurance Company, instigated the announcement that the Physicians Defense Companies, a corporation organized for the defense of the medical profession against suits for civil malpractice, had been ordered by different secretaries of state to desist doing business on the ground that they were writing an insurance contract and were not authorized to do such business. The announcements coming more particularly to our notice were made in the states of Maryland and Illinois. The Company, however, entered upon the defense of its rights, and after a vigorous contest before the several state authorities in which the entire proposition was gone over, the insurance commissioner of Maryland, acting upon the advice of his counsel, decided that the contract written by the Physicians Defense Company was not insurance, and said in part: "While we have no statutory definition of insurance in Maryland, * * * * we learn from the text books and court decisions that in general

terms a contract of insurance is a contract of indemnity, whereby the insurer agrees to compensate the insured for loss arising from an unknown and contingent event.

"The contract of the Physicians Defense Company * * * is one to defend its contract-holder against any effort to place liability upon him, * * * and in my opinion the contract * * * of the Physicians Defense Company is a contract for services and not for indemnity." * * *

It has always been the contention of this Company that the true basis of defense against civil malpractice is ethical; that is to say, the physician is not protected by a company which proposes to pay a judgment rendered against him for civil malpractice, but is only protected by a vindication of his reputation. If this attitude is thoroughly understood by the damage suit lawyer and his avaracious client, the annoyance to the medical profession caused by the prosecution of suits for civil malpractice will in our opinion, be considerably diminished. The fact is, and our conclusion is based on experience as well as theory, that the supposed protection of the Indemnity Company which undertakes to pay a judgment is a menace to the physician, from the very fact that it encourages the bringing of suits in the hope of obtaining a settlement, or a larger verdict than could otherwise be expected.

Judge Franklin Ferris, of St. Louis, Mo., recently made a decision in the Circuit Court, division four, of considerable importance to the medical profession. From the report of the case we have at hand it appears that Mrs. Hoppe sued one Henry Weisheyer for damages for personal injuries. The attorney who represented the plaintiff moved the court to allow her to prosecute as a poor person, which motion was sustained; but afterwards, on the motion of the defendant's attorneys, the court reversed its former ruling, and held that since the plaintiff's attorney had taken the case, as appeared from the proceedings, on a contingent fee of one-third of the amount recovered, and that there was no showing that he was a poor person and come under the provisions of the act of the Legislature made for the benefit of poor people in the prosecution of their suit, that he should be required to file security for the costs of the action, inasmuch as he was an interested party. Under the common law it was chapettry for an attorney to have

a beneficial interest in a case in which he appeared as attorney, but by an act passed in Missouri in 1901 such prohibition was removed and an attorney was permitted to take a case on a contingent fee, and was empowered to serve notice on the defendant of his interest in the case and thus prohibit the defendant from settling the case out of court, or paying any judgment without the consent of the attorney.

Since the passing of the above law it has been common practice for attorneys to take all classes of suits for damages on contingent fees, the result of which has been to encourage promiscuous litigation and throw an abundance of court costs onto the state. This had been possible because the attorney for the plaintiff, although intensely interested in the recovery of a judgment, bore none of the responsibility or burdens of paying the costs of the action. Since this ruling of Judge Ferris, however, there is some hope that suits for damages will be based on more substantial facts in the future.

The need of such a ruling as above referred to is evident when we review the statistics setting forth the number and class of suits brought in one year in the United States, and which have been reported in the Supreme Courts of the states. These figures come to us from "Law Notes," and show that about 1888 the number of suits for damages arising from death and personal injuries were 3.8 per cent., while at the present time that class of suits comprises 11.2 per cent. of all suits decided by the Supreme Courts throughout the United States. These figures are still more appalling when we consider that a less proportion of suits brought for personal injuries are appealed than any other class of suits.

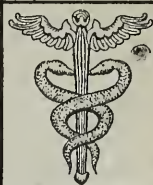
We are further convinced of the necessity of some relief when we read the reports of such ridiculous claims as printed below:

Because he has only a half a face of whiskers left, and the half left is not the left half, Sven J. Lunstedt, of Chicago, is suing for \$25,000 damages.

"It was worth \$25,000 to have a lovely, luxuriant hirsute appendage to stroke on a Sunday afternoon," said Lunstedt. "It wouldn't have been so bad if the whole crop had been burned off, but the way they are now I look like a hair tonic testimonial, showing before and after on the same face."

Lunstedt says whiskers have refused to grow on the left side of his face since he went through an X-ray operation last November.

Judicial Decisions.



Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

SKILL REQUIRED OF SURGEON—NOT INSURER OF PATIENTS.

In the malpractice case of English vs. Free, according to the statement of the Supreme Court of Pennsylvania, the party suing had a car body fall on him, crushing him to the ground and seriously if not permanently injuring the hip joint. He was taken to the office of the party sued, a practicing surgeon, who examined the injury, gave morphia and had him sent to his home. The surgeon continued to treat the case for about four months. Two other surgeons during that time were also called in to see the patient. At the end of that time the surgeon sued told the patient he could do nothing more for him and ceased his attentions. As his hip was not well, and the leg shorter than the other, the man went to Pittsburg and entered a hospital, where the injury was diagnosed as a dislocation of the hip joint, and treated as such, the patient in about two weeks recovering and returning to his home. He claimed, however, and offered evidence tending to show, that there had not been a complete restoration of the limb to its normal condition, and that this result was owing to an incorrect diagnosis of his injury by the surgeon sued, and who, as he alleged, did not treat it as a dislocation, which it subsequently proved to be. The Supreme Court holds that a non-suit was rightly entered. It says that it is settled law in this class of cases that "a surgeon undertakes to possess, and in the treatment of a case to employ, such reasonable skill and diligence as is ordinarily exercised in his profession; and in judging of the degree of skill, regard is to be had to the advanced state of the profession at the time." Taking this to be the law, the burden was on the party suing to prove, at least by the weight of the evidence, that the surgeon sued failed to treat him with reasonable professional skill. The

court thinks that he failed in this proof. It says that the surgeon beyond question was a skilled one, in good repute; he gave attention to the case; he called in to aid him two competent surgeons. It might be that he was mistaken in his diagnosis. The undisputed testimony of quite a number of surgeons, called as witnesses, was that this injury was such that it was very difficult to detect its exact character. The hospital surgeon, who, after putting the patient under the influence of an anesthetic, correctly diagnosed the injury as a dislocation, then reduced it, then by careful treatment practically cured him, testified that in the early stages of the injury it was sometimes exceedingly difficult, and almost impossible, to detect the exact character of the injury; that he had known such injuries to be only correctly diagnosed by the use of X-rays. And such was substantially the testimony of all the reputable surgeons called on either side. Taking the testimony of the party suing in its most favorable aspect, it only showed, not that the surgeon did not bring to the treatment of the case reasonable skill and diligence, but that he might have been mistaken in not finding out its exact nature. To hold him answerable for not exercising more than ordinary professional skill would be imposing on him a burden heavier than the law has yet put on the professional man's shoulders. A surgeon is not an insurer of his patients.

DEATH FROM MEDICINE TAKEN TO ALLAY PAIN.

In the case before the Supreme Court of Missouri of *Dezell vs. Fidelity and Casualty Company* there was involved a policy of accident insurance which insured "against bodily injuries sustained through external, violent and accidental means," and which provided that "this insurance does not cover * * * injuries fatal or otherwise, resulting from poison or anything accidentally or otherwise taken, administered, absorbed or inhaled." The court holds that the better reason supports the rule that such exceptions in such policies do not cover medicine (even though it contain poison) or anything taken or administered in good faith to alleviate physical pain, even though it results in unexpected and unintentional death. In this case, the death of the insured was caused by the effects of morphin contained in a prescription for neuralgia given him by his physician which he had refilled, and the court holds that, so far as the provisions of the policy quoted were concerned, the beneficiary who brought this action was entitled to a verdict as a matter of law.

MEDICAL SERVICES FOR WIFE NOT LIVING WITH HUSBAND.

The Fourth Appellate Division of the Supreme Court of New York says, in the case of Button vs. Weaver, that the husband is liable for actual necessities furnished to his wife, unless he has made adequate provisions for her maintenance, even though they are living separate. As long as the marriage relation continues, the obligation of the husband to support his wife remains. In this case the party sued left his wife—it may be, for the reason which amply justified his departure. She was still his wife, however. He declined to maintain her in his own household, and must make necessary provisions for her elsewhere. The physician suing had previously rendered services to the wife on the faith of the payment by the husband. These services were adjusted by a compromise and payment, and the husband then informed the physician that he could not be responsible for any further services which the physician might render the wife. The services here sued for were performed after this notification, and the husband urged that circumstance as a reason why he was not liable. This position, the court says, would be impregnable if he had provided suitable medical attendance for her, or given her the means to procure it. A husband living separate from his wife may determine in a large measure in what way his credit is to be pledged, and in what manner the marital duty of providing for his wife is to be fulfilled. If, however, he forbid one from running an account against him for necessities furnished for his wife, in order to make the prohibition effective he must otherwise supply for her needs, or permit her to pledge his credit elsewhere. In the present case he directed the physician suing to abstain from performing services concededly necessary for his wife, but made no other provision for her for this necessity. He endeavored to be relieved wholly from the liability resting on him. This he might not do. The physician was entitled to judgment, with interest, besides the costs and disbursements of the action.

A JUDICIAL VIEW OF THE VALUE OF SURGICAL SERVICES.

In a recent suit in the Circuit Court of Michigan (case of Obetz vs. Burton), where a surgeon sought to recover the amount of his professional fees, Judge R. E. Frazer said among other things, in charging the jury: "One important thing to be taken into consideration is that in the last few years antiseptic methods have greatly decreased the difficulties and dangers surrounding surgical operations and consequently the value of such services has decreased."

While the learned judge did not directly allude to anesthesia as one of the things, the introduction of which has decreased the difficulties of surgery, and hence the value of surgical services, he doubtless had it in mind. In other words his view of the matter would seem to be that in the days when patients were strapped to the operating table and shrieked with agony during the operation and when, if they recovered at all, it was only after weeks or months of suffering from the inflammation and sepsis and "laudable pus" which followed all surgical operations, the surgeon was entitled to greater compensation than in these days of painless surgery, when the patient is out of bed in a week without having suffered any pain at all. In the first place the learned judge, while correct in stating that the dangers of surgery have decreased since the introduction of asepsis, was entirely mistaken with regard to its difficulties. Every surgeon knows how much more difficult is the preparation for a surgical operation today, with all its details of sterilization of instruments, ligatures and dressings, and how much greater expense is entailed upon the surgeon, than in the days when he made no preparations at all, simply taking his instruments from a dirty case, and without even washing his hands, going to work.

We should be glad to know whether the view of this Michigan judge is a common one, or whether, as we prefer to believe, it is peculiar to the learned mind from which it emanated.

The chief and noblest aim of medicine and surgery is to prevent suffering and disease, and to minimize their terrors when they cannot be entirely prevented, and the control of many diseases has already become so perfect that there is much less sickness in all communities now than formerly, and consequently much less for the doctors to do. Medical science is constantly developing new methods, not only for the prevention, but for the treatment of disease; methods which reduce its dangers as well

as its sufferings. Has it come to pass, therefore, that the value of medical services has decreased and that its compensation shall be lessened? We think not, nor do we think that this will be the verdict of those who have seen the lives of their dear ones snatched from impending death by some skillful physician or surgeon. Probably Judge Frazer, of Michigan, has had little experience with serious illness or he might be inclined to place a higher value upon the services of the physician and surgeon of today as compared with his predecessors.—Exchange.

DAMAGES RECOVERABLE FOR MALPRACTICE.

The Supreme Court of South Dakota holds, in the malpractice case of Baxter vs. Campbell, that, there being nothing in the complaint or in the evidence from which malice might be presumed, an instruction authorizing the imposition of exemplary damages was seriously prejudicial to the physician sued. The writer of the opinion (Justice Fuller) says that, so far as his research has extended, the damages awarded in actions of malpractice are compensatory, and that the South Dakota statute provides for exemplary damages only as a means of punishment "when defendant has been guilty of oppression, fraud or malice, actual or presumed." In order to justify the imputation of malice, within the rule of punitive damages, the injury must have been conceived in a spirit of mischief, and partake of a criminal or wanton nature. As exemplary damages are penal in character, and malice an ingredient of crime, no one should be adjudged to pay "smart money" without first being accused of something malicious, and given an opportunity to defend. When exemplary damages are predicated on malice the party sued is entitled to know from the complaint what acts, omissions, or circumstances are relied on to constitute the gravamen of the charge, and the instructions of the court should be confined to the case as made by the evidence. Where both actual and exemplary damages are claimed, it has been considered necessary to allege each in a separate count or cause of action; but under the liberal practice of South Dakota a complaint is deemed sufficient to admit the proof when it reasonably appears from the recitals thereof that the damages alleged were maliciously occasioned. According to an elementary rule, instructions concerning exemplary damages, though properly alleged, should never be given unless evidence applicable thereto has been introduced.

PRIVILEGE DOES NOT COVER PRESCRIPTIONS AND DRUGGISTS.

The First Appellate Division of the Supreme Court of New York says that, in the personal injury case of *Deutschmann vs. Third Avenue Railroad Company*, the company called as a witness a druggist, who testified that he knew the party suing, that he had filled prescriptions for her, identified the prescriptions made by a physician who had treated her, and stated that he had filled them for her. The prescriptions were then offered in evidence, and the party objected to them on the ground that they constituted a confidential communication of the physician who gave them, and were therefore inadmissible in evidence; and such objection was also urged to the testimony given by the witness. These objections were overruled, and the evidence given by the witness was received, as were also the prescriptions. In holding that there was no error in this the court says that it is to be borne in mind that at common law the mouth of the physician was not closed as to any matters which were pertinent and competent on the issue, the subject of investigation. And it is always competent for the patient himself to make disclosure of any matter which has been communicated to the physician. The prohibition of the statute relates to the physician alone. It is his mouth that is closed. And the physician's mouth is only closed as to communications necessary to enable him to act in a professional capacity toward the patient. The necessity of having physicians' prescriptions filled by druggists may furnish a reason for the Legislature to say that public policy will interpose to prevent them from making disclosures of the information thus obtained, but it is enough now to say that the statute in question has no application to such a situation. Having parted voluntarily with the prescriptions by delivery of them to a third person, the party suing could not exclude the testimony offered from such a course. Therefore, no error was committed in receiving in evidence the testimony of the druggist, and accompanying the same with the prescriptions which the party suing had delivered to him. Undoubtedly the mouth of the physician would be closed, as he could at no time either authorize another to disclose, or disclose himself, any communications made to the party suing, whether oral or written. His certificate filed in a public office pursuant to the requirements of a statute may not be given in evidence, and is within the prohibition of the statute, as it remained at all times his communication of matter which he

received in a confidential capacity, and is therefore inadmissible. But that rule was without application here, for the evidence was of a disclosure made by the party suing of the physician's communication to a third party, and that, being her voluntary act, authorized proof of the matter disclosed. Evidence from experts to show that the prescriptions called for specifics for syphilis was also competent for the same reasons. The party suing having refused to waive her privilege and permit a physician to testify, the court thinks, in view of the fact that the statute is silent on the subject, that the jury were not precluded from considering the entire attitude of the party, and drawing such inference therefrom as was fairly deducible from the situation which had been created.

CAUSE OF DISEASE A MATTER OF EXPERT OPINION.

The Supreme Court of Tennessee says, in *Mayor and Alderman of Knoxville vs. Klasing*, that it is, and from the nature of the case must be, a matter of expert opinion as to what is the cause or origin of disease, and the testimony of physicians is the most reliable evidence that can be had on the subject.

FACTS MUST BE GIVEN WITH OPINIONS ON MENTAL CAPACITY.

The rule that witnesses required to testify to the mental capacity of a person whose sanity is questioned must first state the facts within their observation, on which they rest their conclusions, the Supreme Court of Minnesota holds, in a case of *Scott vs. Hay*, applies to family physicians who have treated a patient generally for other complaints than his alleged affirmity. It says that the weight of reliable authority sustains this ruling, for, where a personal examination has been made even by a physician or expert, he will be required, before giving his conclusion, to describe the symptoms which he observed, to aid the jury in forming a conclusion. Neither medical experts nor other witnesses can be allowed to give an opinion of the mental capacity of a person without first detailing the circumstances and facts on which such opinion is based, and when the opinion of an expert is not based on a hypothetical case, nor on the testimony of other witnesses, but on facts, symptoms and circumstances that have come under his observation as attending physician of

the patient or otherwise, such facts, symptoms, or circumstances must be fully stated by the testifying witness, so that the jury can determine whether the facts, as well as the opinion itself, are correct. The court says that the reason for adopting this rule seems to it manifest; otherwise, on a question where symptoms only can furnish evidence of the mental condition of the subject of the inquiry is founded would be entirely wanting to aid in the investigation of the question before the court, and the result could be reached only by the number of witnesses on each side, or their respective weight, avoirdupoise or personal appearance, on a matter where there should be a full investigation of all the conditions which must affect the judgment on a most complicated and difficult subject.

COMMUNICATION TO UNDISCHARGED SUPERSEDED PHYSICIAN.

The Supreme Court of Kansas says, in the case of E. Patterson & Son vs. Cole, that a physician was employed to attend a patient who had suffered a personal injury. Afterwards the family physician came, and practically took charge of the case. Later, and within a few hours, the physician first called and again visited the patient, to inquire as to his condition, but administered no treatment. On this visit a statement was made to him by the patient as to the cause of the injury. The physician stated that he did not then regard himself as an attending physician, but admitted that there had been no discharge. The patient, on the other hand, stated that he regarded the doctor as his physician when the statement was said to have been made. The Supreme Court holds that, that being true, the relation of confidence existed, and the statement was rightly excluded on the ground that it was privileged.



Medico-Legal Bulletin.



ORIGINAL ARTICLES

USE OF X-RAY PHOTOGRAPHS AS EVIDENCE.

Ever since their discovery, and their utility in a commercial sense established, photographs have been admissible in courts of law as evidence on questions of identity of persons, premises, and things generally, and for the purpose of making comparisons of handwriting, etc. The courts have always found them useful as assistants in explaining and illustrating the testimony of a witness, or in aiding the court and jury to better grasp the significance of certain facts and apply the testimony to the issues. Photographs are admissible in all cases, however, as secondary evidence only, on the theory that it being impossible to procure the original object of which the photograph is a representation, or exhibit it in court, it is permitted to represent it as faithfully as possible. When admitted at all, it is in an attempt to ascertain the truth and to do justice, the courts being ever ready to utilize any discovery or invention for the purpose of furthering their ends.

"So far as concerns the accuracy of the photographic process, it would be a mistake," says Greenleaf, "to credit it with the necessary correctness independent of human control. It is certain that the conditions of the process can be so manipulated that the photograph is as false as the falsest witness." For this reason, as well as the secondary evidence reason, the introduction of a photograph in evidence necessitates that a proper foundation must be laid, as in other cases where secondary evidence is offered; that is, it must be verified, and shown to be a true and correct representation of the object it purports to represent, by some one who has a proper knowledge of such objects, and can testify that the photograph represents his idea of the object. But it is not necessary for this purpose that the witness should be the person taking the photograph; for even though he is not the photographer, nevertheless the photograph may serve to convey his idea of the subject.

It has been held generally that the judgment of the trial court as to the sufficiency of such foundation for the purpose of the introduction of a photograph in evidence is conclusive, and not open to examination or appeal. The lower court has almost an absolute discretion in this regard. *Blair vs. Pelham*, 118 Mass., 420.

X-ray photographs portraying the inner parts of the human body while presenting no new question, the first attempts to introduce them in courts of law as evidence provoked considerable discussion as to the admissibility and correctness; most of the discussion, however, arose from the latter. The same rules in regard to the use of ordinary photographs upon a trial of the cause, for the better understanding of evidence or the merits of the cause by the court or jury, apply to photographs taken by the aid of X-ray. (*Mauch vs. City of Hartford*, 87 N. W., 816; *Miller vs. Dumon*, 64 Pa., 805). Objections to their exactness and to the indeterminate state of the science were numerous and inseparable.

The liability of bodily injury arising from X-ray burns caused by the application of the X-ray device to the human body also raises an objection of much interest, especially in cases where the machine is used in making an examination of the plaintiff in an action for personal injuries upon the order of the court. Such an examination would be made under the impending penalty of another suit for personal injury to be brought against the defendant in case disastrous consequences would follow. *Hutchison vs. Atlantic Ave. Ry.*

The exactness of results and the fidelity of the Sciograph may be questioned, for it is possible to get exaggeration and distortion from careless manipulation: but after all, though many forms of exaggeration may be present, the relationship of the parts to each other as a whole will remain. One error that is likely to occur results from the casting of misleading shadows of the lead wire used to define anatomical regions, or through a want of familiarity with the direction of the rays. The policy of the courts is well settled, however, as shown by the following quotation from one of the first cases, if not the first decided involving the question of the admissibility of X-ray photographs as evidence. In *Eruce vs. Beall*, 99 Tenn., 363; 41 S. W., 445, the X-ray photograph was introduced showing overlapping bones of one of the plaintiff's legs at a point where it was broken, the question of skill in placing the bones being involved.

"This picture was taken by the witness, who was a physician and surgeon not only familiar with fractures, but with the new and interesting process by which this particular impression was secured. He testified that this photograph actually represented the condition of the leg at the point of the fracture in question; and as a fact, that by the aid of X-ray he was enabled to see the broken and over-lapping bones with his own eyes, exactly as if, stripped of the skin and tissues, they were uncovered to the sight. We might, if we so desired, rest our conclusions on the general character of the exceptions taken to this testimony, but we prefer to place it on the ground that, verified as was this picture, it was altogether competent for the purpose for which it was offered. New as this process is, experiments made by scientific men, as shown by this record, have demonstrated its power to reveal to the natural eye the entire structure of the human body, and that its various parts can be photographed as its exterior surface has been and now is. And no sound reason was assigned at the bar why a civil court should not avail itself of this invention when it was apparent that it would serve to throw light on the matter in controversy. It is not to be understood, however, that every photograph taken by the Cathode or X-ray process would be admissible. Its competency, to be first determined by a trial court, depends upon the science, skill, experience and intelligence of the party taking the picture and testifying with regard to it, and that lacking these important qualifications, it would not be admitted; and it is not conclusive upon the triers of that fact, but is to be weighed like other competent evidence." (See also *Tish vs. Weller*, 7 Ohio N. P., 472; 29 Chicago Legal News, 145).

It is not necessary in this article to discuss with our readers the methods of procuring X-ray pictures, or their values, for these facts have been demonstrated, as also have the dangers of the appliance used. We desire, however, to set forth the cases in an attempt to better show the requisites for their proper use as evidence.

The X-ray photograph is not conclusive, but, as stated above, is only secondary evidence, and can only be used to illustrate or explain the testimony of a witness, or to assist the court or jury in applying the evidence. Consequently, the weight which the photograph will have in determining the issues depends greatly on its clearness, and the expertness of the one who produced it. Generally speaking, the trial court has, as stated before, almost

absolute discretion in admitting or rejecting photographs. This discretion relates, however, only to their relevancy, authentication or verification, and not their weight upon proving or disproving issues of the cause. There are instances in which the court of appeals determined that the lower court had abused its discretion in rejecting X-ray photographs when offered as evidence." (Carlson vs. Benton, 92 N. W., 600.) Great care should be taken, therefore, in putting the preliminary questions to the expert and laying the proper foundation to show the relevancy and authenticity of the photograph sought to be introduced.

To better illustrate our meaning we quote from Jameson vs. Well, 45 Atl., 299: "Within a week after the defendant had ceased attending her, the plaintiff was taken to a hospital for further treatment, and there, before anything was done to the arm, an X-ray photograph of the elbow was taken. This X-ray photograph was admitted in evidence against the objection of the defendant, and exceptions were noted. The learned counsel for the defendant say that their objection lies not to the admissibility of X-ray photographs in general, but to the admissibility of this one in particular, which they claim is an exaggeration and a distortion. We think it is within the discretion of the presiding justice to admit an X-ray photograph; whether it is sufficiently verified, whether it proves to be fairly representative of the object portrayed, or whether it may be useful to the jury, and preliminary questions addressed to him and his determination thereon is not open to exceptions. In the course of the trial Dr. W. L. Hunt was called for the plaintiff:

Q. I ask you if, looking through the Floroscope, you saw those bones the same as they are represented on that photograph? (Exhibit one.)

A. Yes, sir.

Q. Was the instrument properly adjusted to take that photograph of her arm?

(Objection.)

Q. How did you and the artist arrange the instrument?

The Court: So as to produce what effect?

A. So as to take the arm from above downward. The plates were put under the arm in this way. The X-ray was placed above the arm, the rays went up and down with the arm at the level of the shoulder.

Q. What was the result?

A. We got a picture of the shadow of the entire portion of the bones.

Q Whether or not that was a natural picture of them.

A. It was.

Q. And is that photograph a natural picture of them?

A. It is."

The X-ray photograph also assists with wonderful fallacy the claims of the personal injury plaintiff. In the majority of cases, however, speaking from an impartial standpoint, we believe that justice is substantially wrought. The law is that a plaintiff must rest content with one recovery; that is, after he has recovered a judgment against a certain defendant for personal injuries, he cannot recover another judgment for newly discovered developments arising from the original injury. It is very difficult for the plaintiff to prove the probable or necessary results of the injury unless the injured part can be exposed to the jury. The utility of the X-ray in this regard is well illustrated by the following quotation from the *City of Geneva vs. Burnett*: "Plaintiff testified that her foot and ankle, which were injured by an accident, were previously thereto in a sound and healthful condition, and that the injury had produced a permanent, or at least prolonged disability. Some medical men testified that one of the consequences of the injury was, or might probably be, a calcareous deposit in the tissues of the foot, and that they had examined the foot of the plaintiff, who was a young person, by means of an apparatus for making or taking what are called X-ray pictures of it, which disclosed the presence of such a deposit; and that, in their opinion, the deposit was the result of the injury. Plaintiff in error objects because some of the pictures so obtained were admitted in evidence. From the testimony of the witness, we are convinced that no better evidence of the condition of the interior tissues of the foot could have been obtained without a surgical operation, to which the plaintiff was not called upon to submit."

Almost an extreme case in the use of the X-ray occurred in the Haines murder trial, 56 Albany Law Jour. 399, in which case it was used to show the caliber of the bullet in the neck of the murdered man.

One of the most recent, if not the most recent case involving this question was decided in Minnesota, entitled, *Henslin vs. Wheton, et al.*, 97 N. W., 882, in which it was decided that a physician or surgeon was not acting in that capacity, but simply as a scientist when he photographed the body of the plaintiff by the use of the X-ray machine, for the purpose of ascertaining the location of foreign substance.



State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

MINNESOTA—PUTS CHECK ON COMPULSORY VACCINATION.

Chapter 299 of the Laws of Minnesota of 1903 provides that hereafter it shall be unlawful for any board of health, board of education, or any other public board or officer, acting in the state under police regulations or otherwise, or under any general law or city charter however adopted, to compel or require the vaccination of any child, or to make vaccination a condition precedent to the attendance at any school in the state, or to exclude any child or other person from attendance on any school on account of such child not having been vaccinated; except that, in epidemics of smallpox, such boards of health and boards of education may, by joint action, require such vaccination by a duly licensed and practicing physician, to be selected by the person to be vaccinated; provided, that any child may be exempt from the provisions of this act where a reputable physician certifies in writing that on account of said child's physical condition such vaccination would be dangerous to the child's health.

MINNESOTA—ESTABLISHES SANATORIUM FOR CONSUMPTIVES.

Chapter 216 of the Laws of Minnesota of 1903 provides for an advisory commission of five physicians (one a homeopath) and the establishment of a sanatorium for consumptives near Walker, in Cass County. The commission shall appoint in each county from one to three reputable physicians who shall examine on the presentation of orders from the superintendent of the sanatorium all persons applying for admission and determine whether such persons are suffering from incipient pulmonary tuberculosis shall be received as patients in the sanatorium. One

of the prescribed duties of the superintendent shall be to oversee and secure the individual treatment and personal care of each patient while a resident in the hospital and to keep a proper oversight of all inhabitants thereof. He must also maintain a salutary discipline among all employes, patients and inmates and enforce strict compliance with his instructions and obedience of all rules and regulations; he must cause full and fair accounts of the conditions and prescriptions of the patients to be kept regularly from day to day in books provided for that purpose. The inmates must pay when able to do so, but any person unable to pay the charge for support determined by the board of control may be admitted on the request of the county commissioners of the county whereof such person is a resident, and the charges for the board of such person shall be paid by such county.

CALIFORNIA—TO REGULATE OF OPTOMETRY.

Chapter CCXXXIV of the Statutes of California of 1903 makes it unlawful to practice optometry without having obtained a certificate of registration from the board of examiners which the statute creates and having filed such certificate with the county clerk. The practice of optometry is defined as the employment of subjective and objective mechanical means to determine the accommodative and refractive states of the eye and the scope of its functions in general. An examination is required before the board, to be confined to such knowledge as is essential to the practice of optometry. Each succeeding year the certificate may be renewed for a fee of \$2. The board may revoke any such certificate for conviction of crime, habitual drunkenness for six months immediately before a charge to be made, gross incompetency, or contagious or infectious disease. The act specifies that it does not apply to physicians, etc., authorized to practice in California, nor to persons who sell spectacles in the ordinary course of trade, and who do not employ mechanical means to determine the states of the eye as defined above.

ILLINOIS—MUST REPORT DEATHS AS WELL AS BIRTHS—FEES.

The Illinois act of 1903, requiring reports of births, also provides that it shall be the duty of every physician and midwife practicing in the state to report in writing, to the State Board of Health at Springfield, the death of any of his or her patients within thirty days after said death: Provided, That in the case

of deaths which occur within the corporate jurisdiction of cities, the ordinance of which requires that the burial or removal permit shall be issued before the burial or removal of the body, and that before such permit shall be issued a report or certificate of death shall be presented to the official by whom the permit shall be issued, no report need be made to the State Board of Health by the physician or midwife. All reports of deaths shall be made in the manner directed by the State Board of Health on its blank forms. Every physician, midwife or coroner who shall make a report of death to the State Board of Health in the manner provided for shall be paid for each report the sum of 25 cents. The fees for reporting births or deaths are made a charge on the county in which they accrue, and the county clerk of the respective counties shall, on the request of any person entitled to said fees in his county, issue to such person his warrant on the county treasurer of said county for the amount of fees due such person under this act and the county treasurer of said county shall pay the same on presentation out of any money belonging to the county not otherwise appropriated: Provided, That no payment shall be made under the sections providing for payment for reporting births and deaths where the period of gestation is less than seven months.

CALIFORNIA—RELATIVE TO MATERNITY HOSPITALS, ETC.

Chapter CXXXXIX of the Statutes of California of 1903 provides that any person who, without first having obtained a license in writing from the county health officers, conducts any maternity hospital, or who conducts any institution or other place for the reception or care of children, or who keeps at any such place any child under the age of 12 not his relative, apprentice or ward, without legal commitment; or who violates the provisions of this act, is guilty of a misdemeanor. Every such license must specify the name and residence of the person so undertaking the care of such females or children and the location of the institution and the number of females or children allowed to be received. Licenses shall be revocable for any violation of the provisions of the act, or in any case where, in the opinion of the licensing body, such place is being conducted without proper regard for the health, comfort or morality of the inmates thereof, or without due regard for proper sanitation or hygiene. Every person so licensed must keep a register of the names and addresses of all such females, the names and ages of all such

children and of all children born on the premises, and the names and residences of their parents, so far as known, and the time of the reception and discharge of such children and the reasons therefor, and also the name and age of every child who is adopted or taken away, together with the name and residence of the person taking away the child; and within forty-eight hours shall cause a correct copy of the register relating to a child who is taken out to be sent to the county board of health or county health officer, as the case may be. It shall be lawful for all health officers, at all reasonable times, to enter and inspect the premises, to inspect the license and the register and to see and visit the inmates.

WISCONSIN—MATERNITY HOME AND BABY-FARM REGULATIONS.

Chapter 161 of the Laws of Wisconsin of 1903 provides that any person or corporation who own, conduct or manage any institution for the boarding or sheltering of infant children, or any so-called maternity home or lying-in hospital or so-called "baby-farm," shall, before taking any inmate, report in writing to the local board of health, health officer or health department, the name and address of such person or corporation and the exact location of the institution. The local health officer or health commissioner, or his assistants, shall, at reasonable hours, be admitted to inspect the institution. Births, including those of stillborn or prematurely born children, taking place in such maternity home shall be reported to the local board of health or health officer or department within twenty-four hours and before the child is removed from the institution. Likewise, the arrival of any child at a home for infants shall be reported, giving name, sex, age, color and from whom received. The removal of any child shall also be reported. And it shall be the duty of the local board of health, health officer or department to keep informed of the nature and reputation of every such institution in their respective jurisdiction, and to visit and inspect the same from time to time.

Chapter 130 of the Laws of North Dakota of 1903 is for the most part like the California act epitomized on page 1043 of the Journal, October 24, 1903. But it contains as further causes for the revocation of a certificate the advertising himself as an eye specialist or doctor, or holding himself out to the public as being other than an optician, skilled in the art of optometry.—
J. A. M. A.



Medico-Legal Bulletin.



PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. 2

MARCH 1904

No. 6

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

\$1.00 Per Annum

SUBSCRIPTION RATES

Single Copies 15c

ADVERTISING RATES FURNISHED UPON APPLICATION. Non-ethical advertisements will not be received, the publishers reserving the right to reject and discontinue any advertisement at any time.

EDITORIAL NOTES

KINDS OF DEFENSE.

There are several kinds of defense in suits alleging malpractice available to the physician who finds himself a defendant in such an action.

First, is the defense he can secure by the employment of local attorneys and the assistance of his friends in the medical profession. This is always very expensive, and under the most favorable circumstances never wholly satisfactory. The best local attorney that money can obtain is not familiar with actions of this character; does not know the law applicable to these cases, and cannot afford to spend the time necessary to make that preparation which the case warrants to successfully and completely vindicate the defendant. Taking from his motto, that "the attorney's duty is to release his client from the clutches of the law at the least possible expense and annoyance," he will as a rule advise that the case be compromised. This can, in the great majority of

cases, be done at a much less expense than it will cost to secure a decision in the physician's favor in the first trial of the case, under the most favorable circumstances. Such a course, however, should not be considered, for a compromise is an acknowledgment of incompetency, unskillfulness, and negligence on the part of the physician, and must eventually become known, to the detriment of the physician's professional reputation. The results are as injurious to him as a judgment would be, except in degree, as probably there would be some less notoriety under a compromise. If the physician refuses to be blackmailed in any such manner, then the local attorney will proceed with the preparation for defense along the general lines in ordinary damage cases. These, however, are not applicable in malpractice suits. A small amount of special knowledge at this particular time will often prevent any further action or annoyance.

If the trial results favorably to the doctor he can rest assured (in the great majority of cases) that it was on account of lack of knowledge and preparation on the part of the plaintiff's attorney, rather than any particular ability of his own attorney. If the decision is against the doctor his attorney is not to blame, for he is not prepared for such cases; he has not the information available, nor the time necessary, to make suitable preparation. Malpractice is a specialty of that voluminous subject, Medical Jurisprudence, in which not one lawyer in a thousand is even well read. Medical friends who tender their assistance to physicians in such situations very often, on the stand as expert witnesses, do the defendant an irreparable injury. This is on account of their lack of knowledge of law, and the failure of the defendant's attorney to properly instruct them.

SOCIETY DEFENSE.

Second, is the defense to be obtained from membership in Medical Defense Associations, organized by voluntary association of medical practitioners, members of certain state or county societies, or State or County Medical Societies, which in some sections are attempting to render such services. We will consider both plans together, as they are conducted on practically

the same lines, the only difference being that the Defense Associations do nothing else, while with societies it is but a side issue. In either case the association or society must be incorporated otherwise it will be held to be a partnership and each member can be held responsible for the debts of the organization. Membership is held by the payment of certain annual dues which as a rule are limited to \$5. Out of this amount, in the case of the society, one dollar is set aside as a defense fund which it is expected will provide the expense for all suits which may be brought against the members. Let us work the proposition out to its ultimate conclusion, as a business man would do previous to making an investment, taking such information and experience as is available for the basis of calculations.

Taking the American Medical Association with its 18,000 members as a representative medical organization, at five dollars per year, we would have an income of \$90,000, out of which would be set aside a defense fund of one dollar per member, \$18,000. From this amount must be deducted certain fixed expenses which we estimate as follows:

Secretary or manager.....	\$2500
Attorney	2500
Stenographer	500
Office maintenance.....	600
Stationery, postage, etc.....	500
Total	\$6600

These are conservative figures as it will require the entire time of a manager and attorney to look after the details and general supervision over actions threatened against the members of the society. This fixed charge deducted from the gross income leaves an amount available for the defense fund proper, or \$11,400. Taking as an estimate for the number of actions threatened against this membership, 4 per cent., we find that we will have to render service in behalf of 720 cases. We find that we have an average of \$14.44 for each member who requires our services. Unquestionably, many of these actions will not proceed beyond a threat coupled with the proposition to compromise, yet the available fund for the defense of those actions which go to court is far insufficient. At first blush it would appear that the expenses of the general counsel, the attorney at the home office, who exercises a general supervision over these

cases, would be all the legal ability that it would be necessary to employ in any legal action. This, however, is not the case, for with this membership of 18,000 we find them greatly scattered throughout the United States and it becomes necessary for the wise and judicious handling of the suit, to employ a local attorney in each case. In the first place, it is only by courtesy of the courts that an attorney from another state is allowed to appear before its bar and in order to promote the good will of both the court and the jury it becomes necessary to employ local counsel. If a society or an organization of any character were in the habit of sending an attorney to practice in the local courts outside of his home state, as soon as this fact became known the courts would prohibit his appearing before them. In the selection of a jury, the attorney from the headquarters of the association would be at a real disadvantage, whereas the local attorney, knowing the members in the community in which the case is to be tried, can exercise a wise discretion in behalf of the physician, in the selection of the jurors. The expense for retaining a first-class local attorney averages a \$100 retainer fee with from \$50 to \$100 per day for time spent for preparation and the trial of the case. There is to be added to this expense, certain court costs which must be paid by the defendant or the association representing him, also traveling expenses, such as railroad fares and hotel bills to and from and in attendance at the trial of the actions, also expense of expert witnesses. From the preceding it is a foregone conclusion that this plan can not be made a success from a financial standpoint. If the organization is working along these lines and is not incorporated and while defending an actions against one of its members, its resources should become exhausted and for this reason the action be adverse to the physician on account of failure to properly protect his interests, an action would lie against the individual members of the organization for damages. This action would unquestionably be brought against those members who were financially able to satisfy a judgment should one be rendered against them.

The financial objection, however, is not the main one to this plan, for among others which may be mentioned is the increased difficulty in securing a decision favorable to the physician when defended by an organization of this character. In the event of an action, expert witnesses would be selected to justify in behalf of th physician from the members of the same organization, this fact and the fact that the defendant held membership in such an organization would become known at the trial and although the

probabilities are that the court would not allow such evidence to be put in by the prosecution, yet it would be brought in in a roundabout way which could not be prevented and the prosecution would intimate to the jury that they were dealing with a medical trust. Men banded together for their own protection from the law in cases of malpractice, that the defense has all the advantages of an organized body each member of which is vitally interested in the vindication of each other's work. This could be so drawn out that the jury will see only the patient with his visible injury and the united body of medical men trying to prevent what in their minds appears to be a just recovery. The work of the association therefore defeats its objections.

In becoming a member of an organization of this character, the individual in seeking their services in his behalf in a malpractice suit, must relinquish the entire management and control of the case. He must agree to abide by any decision which the counsel may make. Also they agree that they will not compromise his suit without his consent, yet they require, in advance, that he will agree to any settlement they see fit to make. As it is against their rules to pay any judgment or any sum in compromise, if in an action they should decide that it was a just claim, under these conditions the physician would have to abide by their decision and also pay the compromise.

As a rule the by-laws provide that in the event of suit being brought or threatened against a member, he, in order to secure their services, must submit his case to the council. The council after an examination of the claims and the services rendered, can, if it so sees fit, decide that there was incompetency, unskillfulness or negligence in the services rendered by the physician and that therefore there is just grounds for the action, in which event they will refuse to defend the suit. The condition of the physician under such circumstances is as bad as it could possibly be made, for to go before a court after having been condemned by a body of medical colleagues, would so prejudice his case that there would be no possibility of securing a decision, whereas, if his action had been tried first by the courts, there was a possibility of gaining the decision. The latter would necessarily be the fairer trial for the reason that it would be before men trained in the work, in the former, if a physician's case happens to be misjudged—not a fanciful contingency, by any means—the object of the society's misjudgment would have his case prejudiced by a knowledge of the fact that his conferrers consider it not worthy of defense.

Judicial Decisions.



Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

VALIDITY OF CONTRACT NOT TO PRACTICE IN CERTAIN PLACE.

In the Illinois case of Ryan vs. Hamilton, it appeared that the party sued, a physician, signed a contract agreeing never, either separately or as one of a firm, to practice general medicine in or within eight miles of a certain place, without the consent of the other party, while the latter practiced in said place or within eight miles thereof (unless forced to by some unforeseen circumstances, in which case he agreed to pay the other party a reasonable sum). The Supreme Court of Illinois says that the principles of law applicable to this case are the same as those governing the specific performance of contracts in restraint of trade. That contracts in general restraint of trade are generally held to be illegal is beyond controversy. But the rule admits of well-defined exceptions, among which are such contracts as in this case. Contracts of this class, where the limitation as to territory is reasonable, and there exists a legal consideration for the restraint, are valid and enforceable in equity, and in such cases relief by injunction is customary and proper. In all such cases it is not the business of a court to inquire whether the consideration is adequate, or of equal value to that which the party loses by the restriction; it is impossible for courts to tell how valuable to the complainant or how injurious to the defendant may be the restraint sought. It is sufficient to uphold such contracts if the court concludes that there is some legal consideration; but the adequacy of the consideration is within the exclusive dominion of the parties where they contract freely and without fraud. In this case the consideration for the contract appeared to be the purchase from a partner of the physician signing the contract certain personal

property of the former, which the firm had used in and about their practice, so that the signer of the contract might be enabled to carry out a purpose he had of becoming a specialist and re-entering into business with his former partner. The court holds that it could not be reasonably contended that there was no consideration though the signer received no money. Moreover, the court thinks it sufficient that the injured party showed that the signer of the contract returned and engaged in practice after making an effort to form a partnership with him and an effort to purchase his (the injured party's) business, and, if there was anything other than the ordinary business motives that prompted the signer of the contract, it was the latter's duty to have disclosed it, to be protected by the provision excusing him if forced by some unforeseen circumstances. Nor does the court consider this provision too indefinite to permit of the enforcement of the contract. It says that in interpreting such writings it is the duty of courts to give them a reasonable and sensible construction, and, as far as may be, carry out what was the intention of the parties. The modern trend of the law has been to recognize a person's property right in the good will of a business built up by him, and the tendency is to remove the restrictions formerly placed on its sale. And, according to well-established rules of law in this and other states, the court regards the restrictions imposed by the contract in this case as reasonable.

CONSTITUTIONALITY OF COMPULSORY VACCINATION LAW.

The Second Appellate Division of the Supreme Court of New York says that, in the case of *Viemeister vs. White*, where the first-mentioned party sought to compel the admission of his child to a public school without the submission of the latter to vaccination as required by the state statute, attention was called to various provisions of the state constitution in an effort to establish a conflict between the statute and the fundamental law. First among these provisions was one that, "The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." But the court is of the opinion that the constitution did not intend to change the practice and policy of the state in reference to the schools, but merely to insure a continuance and an extension of the privileges of citizens of the

state, and that the Legislature has a right to impose any reasonable regulations on this privilege which operate equally on all persons in the same class and under the same conditions. Continuing, the court says that it may be conceded that the Legislature has no constitutional right to compel any person to submit to vaccination; but where the state grants a privilege it has the right to determine the conditions on which it may be enjoyed; has a right to regulate the privilege in the interests of the fullest enjoyment by all; and, so long as this regulation does not operate to deprive any member of the state of "any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers," there is no ground on which the statute may be declared null and void. The vice against which this constitutional limitation was directed was partial legislation—legislation which operated, not on the legislators and their immediate constituents, but on limited numbers of people. If the statute in question is not justified, if it is not wise or proper to impose the condition there named, it must be presumed that the Legislature will in the future remedy the wrong. It can not be done by the courts. The statute violates no specific guaranty.

QUARANTINE UPHELD BY PHILADELPHIA COURT.

Judge Davis, in Quarter Sessions Court, Philadelphia, recently dismissed the writ of habeas corpus brought to gain the liberty of Norman R. Hyland and his family, who were declared to be starving to death after a week's smallpox quarantine at their home. The action of the Bureau of Health in denying Hyland, his wife and three children the means to obtain food was said to be due to the man's persistent refusal to have one of his children, suffering from smallpox, removed to the Municipal Hospital. The Bureau of Health justified its action by the fact that the city has a hospital for all such cases. The attorney for Hyland demanded that the man be allowed to work or that the city provide food for the family. After hearing the testimony of both sides, Judge Davis said the case narrowed down to the question as to whether the Board of Health had a right to quarantine the house. This right was given, the judge said, in an act of 1883. He stated that if the condition of the family was as stated it was unfortunate. "But," he continued, "if provision is to be made for families being under quarantine in their homes, there would be danger of many families being under quarantine for 365 days of the year."—M. N.

RIGHT TO PRACTICE.

Dr. L. W. Zochert, Fond-du-Lac, Wisconsin, has sued Dr. J. H. Blekking, Hingham, for the recovery of \$1,000 on alleged breach of contract. The defendant in consideration of \$1,000 and \$200 equity in property, is asserted to have given the plaintiff the entire field of the town of Hingham. A temporary injunction has been granted restraining Dr. Blekking from practicing medicine within an eight-mile radius of Hingham.—J. A. M. A.

OSTEOPATH FINED \$200.

Everett P. Clisby, an osteopath, who formerly practised in Boston, was recently fined \$200 in the Third District Court of Philadelphia for practicing medicine without a legal degree. He appealed and was held in bonds of \$500. Herbert Parker, a brewmaster, claims that Clisby failed to reduce a dislocation of a fractured shoulder and left him unable to raise his arm above the elbow. The defense was that Clisby's use of the title doctor never meant anything but doctor of osteopathy.

CHRISTIAN SCIENCE LITIGATION IN NEW HAMPSHIRE.

An exchange says: An opinion in a case was rendered recently which established the legal right of Christian scientists to treat diseases of all kinds without danger of civil or criminal liability so long as they confine themselves to Christian science practice. In the same opinion, however, the court held that there was evidence upon which a jury might properly find that a defendant had deceived the plaintiff to his injury.

TECHNICALITIES OF INSURANCE.

If you are a trifle "lit-up" or even well "jagged," and happen to meet with an accident, you must not expect to recover if you're insured under a Pacific Mutual contract, which clearly states that the company is not liable for accident to the insured incurred while intoxicated, delirious or otherwise mentally deranged on account of disease. Michael T. Carr, of Kansas City, while delirious from the grippe, leaped from a window and was hurt. He sued under his accident policy in the Pacific Mutual and was given a judgment by the lower court. The Missouri Court of Appeals has decided that the letter of the contract in the policy is binding, and has reversed the verdict.

THE STATE BOARD OF HEALTH FORBIDS EMPLOYMENT OF TUBERCULOSIS TEACHERS.

The Indiana State Board of Health has forbidden the re-employment in public schools of teachers afflicted with tuberculosis. According to the investigation carried on by the board, 250 teachers in the state have tuberculosis.

APPOINTMENT OF EXAMINERS BY ASSOCIATION.

The Supreme court of Indiana holds, in *Overshiner vs. State*, that the general assembly, in conferring upon the State Dental Association power to appoint three members of the state board of dental examiners, did not transcend its constitutional power, and that appointments to said board of examiners by said association are valid. It was contended, for one thing, that the statute must fail for the reason that the legislature had no constitutional warrant for bestowing police powers upon a private corporation, to be by it exercised upon the citizens of the state. But the Supreme court says that it perceives no reason why a corporation, such as the one in question, may not prove itself a repository of power as safe and salutary as an individual. This corporation is composed of practicing dentists, organized for the promotion of scientific knowledge and skill in the practice of the profession of dentistry, and which association thus stands in an intimate and well-formed relation to the subject, and possessed of a peculiar interest in the successful administration of the law. It is difficult to conceive of an appointing power with higher qualifications, or likely to be swayed by more laudable motives; and that it is an organization of persons mutually interested in the enforcement and proper administration of the law surely furnishes no reason for its condemnation.

MICHIGAN'S MEDICAL LAW IN OPERATION.

An osteopath, who settled recently in Charlotte, Mich., fitted up an office in elaborate style before he discovered that the Legislature in its last session had passed a law excluding him and his brethren from practice. He has sold out and gone to the more "liberal" state of Nebraska.—Exchange.

ILLINOIS—RESTRICTS SALE AND PRESCRIBING OF COCAINE.

What is to be known as Section 14a of the act to regulate the practice of pharmacy in Illinois is added by an act in the laws of 1902. It provides that it shall not be lawful for any druggist or other person to retail or sell or give away any cocain hydrochlorate, or any salts of or any compound of cocain, or any preparation containing cocain, or any salts of or any compound thereof, except on the written prescription of a licensed physician or dentist, which prescription shall only be filled once and must have written plainly on it the name and address of the patient. This section shall not apply to sales at wholesale by any manufacturer or wholesale dealer, who shall sell original packages only. Each container must be labeled with a label specifically setting forth the proportion of cocain contained therein. What is to be known as Section 14b, provides that any druggist or other person who shall retail or sell any cocain, etc., in violation of this act, and any druggist or other person who shall prescribe any cocain, etc., to any person addicted to the habitual use of cocain, etc., in any form, shall, for the first offense, be fined from \$50 to \$200, and for each subsequent offense from \$200 to \$1,000, and if the person so offending shall have a license as a physician, dentist or pharmacist, such license shall be revoked. (The words "knowingly prescribes" do not appear. The physician apparently has no escape in case he fails to recognize a patient as a cocain user.)

A PECULIAR VERDICT.

According to American Medicine a German court recently made a peculiar award to Weissberger, a prominent surgeon of Frankfort, Germany, who was so severely injured in a railroad accident some time ago that he had to cease practicing his profession. His claim for damages being submitted to a court of law, it was decreed that the doctor shall receive annually from the company 17,000 marks (about \$4,000). The character of the award rather than the amount has attracted attention among lawyers generally.

MINNESOTA—RESTRICTS COMMITMENT OF HARMLESS INSANE.

Chapter 106 of the Laws of Minnesota of 1903 provides that no harmless person, who can not be benefited by hospital treatment, shall be committed to any hospital for the insane merely because he is suffering from idiocy, epilepsy, imbecility or infirmity of old age. Every jury appointed to examine an alleged insane person, in addition to the facts by law required to be ascertained, shall ascertain and determine whether or not such patient can be benefited by hospital treatment. The superintendent of any hospital for the insane, with the approval of the board of control, may at their discretion discharge or parole any inmate of such institution who is capable of caring for himself or can be cared for by relatives, and who is not dangerous to himself or the community.—Exchange.

The Physicians' Defense Company seems to have come to stay. Its home office is in Fort Wayne, Ind., and it has a record of which it may well be proud. It is the only company that makes a specialty of defending physicians who are sued for malpractice. It has no other functions and it is the only company in the United States that has made this a specialty. That the services rendered are of the best, goes without saying. Every physician knows that a specialist is better in his chosen field than the mere rank and file. It is the same with this particular phase of legal work. A physician's liability policy, as its title implies, is a bait because any shyster lawyer is attracted by the prospect, not of getting money out of the physician, but of the company who will advance it for him. On this account it cannot be said to be as advantageous as to have a company which will see to it that a physician wrongfully accused of malpractice is honorably exonerated. We will have occasion to recur to the subject in the future. Meanwhile, every physician of any standing in his community should avail himself of the opportunity of entering into a contract with the Physicians Defense Company, said contract costing but twenty dollars a year. The general agent of the company at St. Louis is D. H. Bixler, 314-315 De Soto Building.—Editorials, St. Louis M. & S. Jol., Feb., 1904.

QUACKERY IN RACINE, WIS.

The physicians of Racine have decided to wage war upon quacks, with whom their town seems to be especially infested. Representations will be made to the district attorney and a series of vigorous prosecutions inaugurated.

UNQUALIFIED PRACTITIONER SUED.

Frances McCandless, of Atlanta, Georgia, a graduate of the American Health College, of Cincinnati, an institution incorporated with the object of "teaching and practicing the Religious Spiritual Vitapathic System of Health and Life for Body and Soul," has, nevertheless, been sued by an ungrateful patient for \$20,000 damages for alleged malpractice.

OFFENDER PROVISIONALLY RELEASED.

On her promise to refrain from practicing medicine, Mrs. Edith Nail, of Pekin, Illinois, who was arrested a short time ago on the charge of illegal practice, was released September 10.—J. A. M. A.

NONAGENARIAN ILLICIT PRACTITIONER.

Brooks Johnson, a colored individual claiming to be 98 years old, was recently arrested in the District of Columbia on the charge of practicing medicine without a license. The complaints allege that he offered to remove "spells" for \$25.

APPLICATION DENIED.

Dr. William C. Woodward, secretary of the Board of Medical Advisors of the District of Columbia, has informed the commissioners that the board refuses to grant Salina Armstrong Hopkins, M. D., a license to practice medicine in the District, as the papers filed by her are not sufficient to warrant the issuance of a license without fee or examination.—J. A. M. A.



Medico-Legal Bulletin.



ORIGINAL ARTICLES

INSURANCE NO PROTECTION.

The rapid increase in the number of suits arising out of personal injuries is only too evident. It is estimated that in 1888 suits of this character comprised about three per cent. of all litigation coming to the notice of the courts of last resort. At the present time they comprise about twelve per cent. It is safe to say that a considerable number of these suits never reach courts of last resort, as they are seldom appealed if the result in the lower court is adverse to the plaintiff

The burden of paying judgments for damages has created a demand for insurance against this liability and corporations and employers of every size and description realize the necessity of this protection. At the present time we have a multitude of employers' liability companies which insure against the liability of one person for negligent acts resulting in damage to another person. The business of these companies is purely insurance, and is based on the theory of indemnity. To whatever extent these methods may relieve the judgment defendant from financial liability they have not succeeded in diminishing the number of suits nor prevented the recovery of large judgments. On the contrary, however, we believe it is generally conceded that the knowledge on the part of damaged persons that such insurance exists encourages claims for damages in the hope that the insurance company will compromise. The only basis upon which an insurance company can reckon is the cheapest way to dispose of its liability.

With this fever for damage suits there has developed a marked proclivity to sue physicians and surgeons. These suits

are not confined to attacks against fakes and quacks and incompetent physicians and surgeons in general, but are directed as well against the competent and responsible men. In fact, it may be correctly stated that the responsible practitioner is more often attacked than the irresponsible one. This is true because there is generally something tangible back of the former. In this respect insurance policies, insuring against the liability of a physician or surgeon for his acts, place quacks on the same footing with the responsible and competent. This is true because it places a fund back of every insured in the shape of indemnity and which is a bait for the damage suit plaintiff. The effect of the physicians' liability policy is evidently to increase suits for malpractice by putting physicians and surgeons, irresponsible in both professional integrity and finance, on a basis where a judgment recovered against them may be satisfied.

We do not believe that liability insurance was ever intended for the protection of professional men. The professional man does not need indemnity and should not require it, but he does need vindication of his professional integrity. For this phase of the question the insurance company has little or no sympathy. Their plan is based entirely on their own financial liability and most of their energy is expended in devising ways and means by which they may escape liability under their policy rather than for defending their policy holders. The provisions of their policies are generally framed in view of escaping all possible liability.

One of the most often recurring instances in which the insurance companies escape liability under their policy is in cases where an action for damage is brought against the physician or surgeon for the negligent acts of an agent, nurse or employee. It is not our intention to discuss here the liability of a physician or surgeon for the acts of his assistants, for that question is not material to our discussion. It is sufficient to know that suits of this character are very often filed. From the records of this department we find that about thirty per cent. of the suits are predicated on the negligent acts of assistants, nurses or employees.

On the back of policy form 337, issued by the Fidelity Casualty Co., of New York, under the schedule of warranties, we find the following: "(10) I have no partner, or partners, or employees who are in active practice, except as follows." The answer of the physician who held this policy was, "No." Owing to enforced absence from the city the policy holder placed his

patients in charge of another physician, who administered treatment in the office of the former. During his absence one of his patients received an X-ray burn, and on his return the policy holder found that he was a defendant in a suit for malpractice alleging unskillful use of the X-ray machine by his employe. As required by the terms of his policy he notified the insurance company. In answer to this notice he received advice to the effect that, as the negligent act complained of was performed by an agent or assistant, there was a breach of warranty number ten and the company disclaimed all liability under their policy. We quote from the company's letter to the policy holder, dated December 20, 1903: "On account of the breach of said warranty and because the act complained of was performed by Dr. ——— (the employe), and not by assured, we beg to confirm our previous advice that this action is not covered by any insurance which he (the policy holder) carries in this company."

Fortunately for the physician, however, he held a defense contract issued by the Physicians Defense Company, and that company immediately upon notice being received that the suit had been filed, retained counsel and proceeded to defend the suit. Through their attorney the company succeeded in having the suit dismissed at plaintiff's cost before issues were formed.

As another instance of the complete failure of the insurance company to protect the physician and surgeon in his real hour of need, we quote the following two letters from E. A. Dill, M. D., which are self-explanatory:

"Physicians Defense Company, Fort Wayne, Ind.

"Gentlemen: My policy with the Fidelity and Casualty Company has proved worthless to me. Although I have carried one for several years, when suit was entered against me the company absolutely refused to defend me on the ground that services were rendered by my assistant. I now carry a contract with the Physicians Defense Company.

(Signed.)

"E. A. DILL,

"810 N. Broadway, St. Louis, Mo."

"Physicians Defense Company, Fort Wayne, Ind.

Gentlemen: I have just been told that the Fidelity and Casualty Company are circulating the report that I now hold a new policy with them, and that they refused to defend the action brought against me under the old policy for the reason that the old form did not provide for the defense of action where the services were rendered by an assistant. I wish to state that I do not hold their new policy, nor would I have one as a gift; and,

further, I fail to see any change in their new policy regarding action brought against the assured where services are rendered by an assistant.

(Signed.)

Very truly yours,

"E. A. DILL,

"810 Broadway, St. Louis, Mo.

"February 29, 1904."

In all these cases where the question of liability for acts of another is involved it is absolutely immaterial to the defendant whether or not he is in fact liable, so far as the necessity of defending himself is concerned. This much is certain, however, the physician has been sued, he must defend, and this means expense, annoyance and loss of time. We fail to understand what benefit can inure to him under the liability policy of a company which disclaims all liability. In such a case the policy holder has the prospects of two suits on his hands—one to defend himself against the claims of blackmail and another for the purpose of enforcing his rights against the insurance company. It behooves the profession to look to the contract they are buying, otherwise instead of buying protection they may be buying a lawsuit.

LIABILITY FOR NEGLECT OF PATIENT DURING VACATION.

The First Appellate division of the Supreme Court of New York says, in the case of Gerken vs. Plimpton, that a physician who undertakes the treatment of a patient is bound to exercise not only the skill required, but also care and attention, in attending his patient until he notifies the patient that his professional relations are terminated. A physician and surgeon engages to bring to the treatment of his patient care, skill, and knowledge; and while, when exercising these, he is not responsible for mere errors in judgment, he is chargeable with knowledge of the probable consequences of an injury, or of neglect in its treatment, or unskillful treatment. And when a physician is employed to attend upon a sick person his employment continues while the sickness lasts, and the relation of physician and patient continues, unless it is put an end to by the assent of the parties, or is revoked by the express dismissal of the physician. Here, a physician and surgeon, whose qualifications as such were con-

ceded, was called in as a surgeon in connection with a physician who was first summoned, who did not consider himself competent to treat a case of the kind, to treat fractured left arm. As a surgeon, the court says, he undoubtedly undertook the case, and in doing so assumed to give it the care and attention required. He put the arm in splints, and directed the patient to carry it in a sling. Thereafter, for about six weeks, he attended the case, and all of the physicians called as witnesses united in saying that the method of treatment adopted till then was proper. Then, however, he went away for a vacation. The bones had not yet united. But when he returned, after five weeks' absence and again examined the arm, he found that the bones had slipped from their position, overlapped, and in this position formed a union. He testified that, prior to his leaving, he told the patient that he was going away on his vacation for two or three weeks, and that, if she desired him to call again, she must send for him. Her testimony was that he stated that he was going away for a vacation, and that he would be back again within ten days or two weeks, and in the meantime directed her to keep her arm in the sling. Under all the circumstances, the court thinks that the jury was justified in finding, if it believed the patient's version of that interview, that the doctor had been negligent in the discharge of his duties which he had assumed in relation to this patient. The jury returned a verdict in her favor for \$2,000, which was reduced by stipulation to \$500 to avoid a new trial being granted by the judge, who considered the amount of the verdict excessive. And whatever may be said of the original verdict of \$2,000, the Appellate division thinks it quite evident that \$500 was not excessive, especially when there was evidence tending to show that the only practicable treatment at that time was to fracture the bones where the union had taken place, and then wire the bones in their proper position, and that the reasonable value for such an operation would be \$500, after which the patient would be in the position she was when the doctor left for his vacation, but with no certainty that there would be a union of the bones.

MEDICAL EXAMINER'S DECISION NOT FINAL.

The Supreme Court of Nebraska holds, in *C. B. & Q. R. R. Co. vs. Olson*, that the decision of the medical examiner of the relief department of a railroad company that a member is "not entitled to any further disability benefits" is a mere conclusion, and is not binding on the parties.

LARGE MEDICAL FEES.

A number of fabulous statements have appeared in the press as to large fees paid to Professor Lorenz during his "bloodless" campaign in the United States. According to the Journal of the American Medical Association he is reported to have said: "I see it reported in this country that I have made \$160,000. (£32,000). Now, as a matter of fact, I got one fee of \$30,000 (£6,000) in Chicago, and in the four months I have been here I have earned just \$30,000 (£6,000)." Whether this somewhat cryptic utterance is to be interpreted as meaning Professor Lorenz received in all £12,000 during his stay in America, or that he got nothing more than the fee for his treatment of Mr. Armour's little daughter, is a matter which concerns only the distinguished surgeon himself. In any case, £6,000 is a very fair fee even for crossing the Atlantic. American millionaires are generally liberal in their acknowledgment of medical services.

Mr. Jay Gould, who died in 1893, leaving an estate of over £14,000,000, paid his doctor a regular salary of £3,000 a year, whether sick or well. For two months' attendance on his daughter, Mr. Gould paid between £17,000 and £18,000. Mr. Whitney paid £5,000 for a week's attendance.

Among other large fees may be mentioned one of £12,000, which it is said was offered to a late president of the Royal College of Physicians of London, for visiting a patient in Cannes. For the same journey the late Sir Morell Mackenzie got 1,000 guineas, for his attendance on the Emperor Frederick he received in all £13,000.

For bringing the King of Rome into the world Dubois, the famous obstetrician, was named a Baron of the Empire by Napoleon, received a fee of £4,000, and an increase of salary.

The late Professor Zakharin, of Moscow, for two days at the deathbed of the late Czar, received £3,000; for a visit to a Russian millionaire he received £1,400, with £200 for his assistant.

One of the largest fees on record is that received by Dr. Dimsdale, an ancestor of the ex-Lord Mayor, for inoculating Catherine the Second, Empress of Russia, against smallpox in 1762. The fee itself was £10,000, but, in addition, the fortunate physician got £2,000 for traveling expenses, with a life pension of £500, the title of Baron, the rank of Councillor of State, and the office of Physician in-Ordinary to the Empress, who further graciously gave him her portrait.

IF IMPROPER TREATMENT FOR BEAST, WHY NOT FOR MAN?

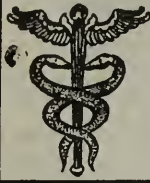
The Texas District Court at McKinney has decided against Christian Science as the proper treatment for animals. The case came from the County court in a suit brought by a farmer of Collins county against the Houston and Texas Central Railroad for so injuring his horses with a train that they died. The testimony was straight, and it seemed that the plaintiff would win his contention without a doubt. He went on the stand in his own behalf, and what he said in answer to questions strengthened his case until the attorney for the railroad asked him what treatment he had given the horses. He answered that he had given them a Christian Science treatment only. He had prayed for them, but had put nothing on their wounds and had done nothing to relieve them. The jury returned a verdict for the Railroad company.—Exchange.

EDDYITE TREATMENT FAILED TO CURE EVEN A COW.

The Denver Republican of January 14 says: "It is not expected that Mrs. Anna Tweedy will practice Eddyite methods of healing upon dumb animals in the future. The State Humane Society, through Assistant Secretary Oliver E. Tuft, recently prosecuted her in Justice Byrne's court on the charge of cruelty to animals, alleging that she tried to heal the broken hip of her cow by absent treatment. The court imposed a fine of \$100 and costs, but owing to the fact that Mrs. Tweedy is not wealthy and is a cripple, the fine was remitted."

RESPONSE TO CALLS.

A state license to practice medicine bestowed upon a physician is held in Hurley vs. Eddingfield (Ind.), 53 L. R. A. 135, to impose no obligation to respond to every call, so as to render him liable for arbitrarily refusing to attend a sick person, although no other physician is procurable.



State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

NORTH CAROLINA—TO PROMOTE MEDICAL SCIENCE.

Chapter 666 of the Public Laws of North Carolina of 1903 provides that the professors of anatomy of the several medical schools of the state shall be a board for the distribution of the unclaimed bodies of persons who at the time of death were prisoners under sentence for crime. But the body of a confederate soldier or of the wife of a confederate soldier is to be excepted from the provisions of this act, and the body of no white person shall be delivered to any school for the colored race. The bodies obtained hereunder shall be embalmed before use for dissection.
—Jour. Am. Med.

LIABILITY FOR CARE OF SMALLPOX PATIENTS IN IOWA.

The Supreme Court of Iowa says, in the case of Walker vs. Boone County, brought by a physician, to recover for services rendered in taking charge of a pest-house and caring for smallpox patients, after a city board of health had approved his claim, that the mayor and city council of each city in that state constitute a local board of health. And where it is made to appear that smallpox or other disease dangerous to the public health exists, the board has power to make provision for the care of patients, and may remove the same to a separate house, or to a detention camp or hospital. It may provide nurses, needful assistance and supplies, which shall be charged to the patient, or those liable for his support, if able; if unable, it shall be done at the expense

of the county. Code, Section 2570. By Code, Section 2571, it is further provided, among other things, that all expenses incurred in the enforcement of the provisions of the Code relating to the public health, when not otherwise provided, shall be paid by the city. The expression "when not otherwise provided," as used in this section, can have relation only to the provision made in Section 2570 for charging matters of expense to the county, as the matter of the expense incident to the enforcement of the laws relating to public health is nowhere else referred to. Now, the reading of the provision in Section 2570 in plain, and the meaning unmistakable. If the patient is unable to pay, and those liable for his support are unable to pay, then the county must bear the expense. The corollary follows that the county can not be made to pay except that the condition on which its liability depends are made to appear. In this case the record did not disclose that the physician suing made proof that the patients attended by him and those liable for their support were unable to pay. Such being the condition of the record, it followed that the trial court did not err in sustaining a motion for a verdict in favor of the county and entering a judgment against the party suing for costs. --Jour. Ani. Med.

MEDICAL COLLEGE BILL AGREED UPON.

The vexed question as to whether or not the students of the Medical College of the State of South Carolina shall be exempt from the state medical examinations is now drawing to a close, through a compromise bill now before the general assembly; a bill drafted by Dr. S. C. Baker, of the examining board, and Dr. Alfred Memminger, of the Medical College of the State of South Carolina.

This bill has been agreed to by Representative Richards and a committee of the South Carolina Medical Association, composed of Drs. Whaley, McIntosh, Trippe, Baker and Memminger, and through the written assurances made Mr. Richards by this committee, he has consented to withdraw his opposition. He was the author of the law exempting students from examination. The passage of this bill will not only be acceptable to a majority of the faculty of the medical college, and the association, but also to the first, second and third year students of the college who have given their support to the measure, which will require them to be examined on senior studies only upon their appearance before the state board.

Medico-Legal Bulletin.

PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. 2

APRIL 1904

No. 7

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

\$1.00 Per Annum

SUBSCRIPTION RATES

Single Copies 15c

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EDITORIAL NOTES

THE MEDICO-LEGAL VALUE OF THE ROENTGEN RAYS.

The following appeared as an editorial written by Mihran K. Kassabian, of Philadelphia, in American X-Ray Journal, February, 1904:

That the skiagram, in forensic medicine, has distinct uses and value is a fact that has for some time been known to both the medical and legal professions. As time glides onward we shall observe that the skiagram, "the exact picture of the true state of affairs," will replace in the majority of accident cases the ordinary witnesses; the court and jury arriving at a decision either for plaintiff or defendant in less than half the time previously required.

The correctly produced skiagram is reliable, and when so produced can only illustrate the true state of affairs. It is, however, to be remembered that in order that a picture may be considered reliable, it must have been produced by a person who has had sufficient experience and as a result is skilled in the art of skiagraphy. The question as to who shall consider a skiagram

as reliable evidence can in court only be decided by a person who is an expert in this particular work.

Speaking of a certain case in which he was called as an expert, and in which a skiagraph was used, the writer says: In the first place it had been made by a person who was not an expert (his occupation being salesman of X-ray instruments); at the same time the party in question had no experience in X-ray work (he having made only about a dozen attempts at skiagraphing various parts of the human body), a fact which he early admitted while on the witness stand. These facts alone would have rendered the photograph unreliable, but what is perhaps of more importance, dark lines were pointed out by the plaintiff's surgeon as "fracture lines"—at this time being "lines of callus." as he claimed. The "experts" in question had never seen four spine cases, which I made them admit when my time on the witness stand had come. What he claimed to be a shadow of callus I proved to the judge, attorneys and jurymen to be nothing more than a shadow of a spinous process—in fact, the picture on very close examination showed five or six such supposed "fracture lines," which were nothing more than the shadows cast by the spinous processes of the respective vertebrae. This thus illustrates the fact that a skiagram may be unreliable, and should never be permitted to be entered as testimony until passed upon by a person whose expert competence is generally known.

From the foregoing points it may be observed that a skiagram in medico-legal cases is practically of no authoritative value unless it has been produced by an expert. Again, it is very largely useless unless its value and exactitude are explained by either a physician or surgeon to the court. Its correctness can only be certified to by a person who is no other than an X-ray expert. The better way is for the expert who produced the skiagram to do the testifying, and never should an expert witness testify to a skiagram that had been made by an electrician or other non-medical man.

The value of a skiagram in medico-legal cases may be subdivided into the following heads: (1) The relation of a skiagram to the physician in making his diagnosis is of the utmost importance. I earnestly urge every physician to early have a skiagram taken of an accident, or other case, i. e., before any treatment has been instituted. Such records will protect the attending physician against any attempts at suits for damage in or out of court.

(2) The value of a properly taken skiagram to the judge, attorneys and jurymen is indeed so great as to leave the proceedings of an accident damage suit in darkness when no such evidence can be submitted. The time of such suit is greatly lengthened without such, and, besides, the expenses of the court are increased.

The Roentgen rays show all kinds of fractures, no matter where located, with one or two exceptions, they being the base of the skull and fractures of certain portions of the vertebrae. The presence of a fracture can most decidedly be revealed in all other parts of the human body. Today we can show the exact structure of the bones, ligaments and tendons by means of the X-rays, and when fractures are present and are not reported by the skiagrapher, incompetence can be proclaimed.

Deformities.—The majority of legal cases belong to this class. The skiagram of fluoroscope reveals the actual degree of deformity of the osseous structures. If careful technique is employed there will be no resulting distortion or exaggeration of the true state of affairs. The question is often asked, "Could deformities have been avoided?" The answer to this may be as follows: The deformity is perhaps due to the fact that the physician did not know how to diagnose, and, as a result, properly treat the case, and the deformity may have been due to the patient disobeying orders given by the physician or surgeon. Deformities in some instances will result no matter what care the physician and patient may take. In such cases it is always advisable to so inform the patient as soon as possible. The attending physician, if afterwards the latest, up-to-date, improved treatment has been employed, may be found by court to not be liable.

Interpretation.—Now study the negative, provided it is satisfactory as to technique. Compare with previous negatives you have taken of the same part of the body and also with the corresponding normal part of the same person, being careful, however, to ascertain whether the supposed normal part has ever been the seat of a fracture. Print several copies light and dark, so you can choose the print that shows the condition the clearer. Write on the negatives the names of the bones and try to make the picture intelligible to any one who examines it. Also make a tracing on the card, which will facilitate a proper understanding of the picture to untrained eyes. Having now made a positive diagnosis, write your expert diagnosis in a clear hand. An X-ray diagnosis will carry more weight in court if made by a

physician, than if made by a man who is merely a photographer or a manufacturer of X-ray apparatus.

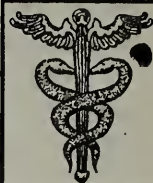
When called to court as an expert witness in a medico-legal case, it is important for the X-ray diagnostician to prepare himself carefully on the anatomy and pathology of the parts; to take with him negatives and prints of his X-ray examination, together with a set of bones of the part under consideration. When on the witness stand, he should be careful and accurate as to his statements, remembering that the opposing party may also have an expert witness who would be likely to dispute his statements.

I cannot do better in conclusion than to quote the sensible, manly advice given by Sir William Blizard, of London. He says: "Be the plainest man in the world in a court of justice. Never harbor a thought that if you do not appear positive you must appear little and mean. Give your evidence in as concise, plain and yet clear a manner as possible. Be intelligent, candid and just, but never aim at appearing unnecessarily scientific. State all the sources from and by which you have gained your information. If you can, make your evidence a self-evident truth. Thus, though the court may at the time have a mean opinion of your judgment, they must deem you an honest man. Never be dogmatic or set yourself up for judge or jury. Take no side whatever, but be impartial, and you will be honest."

PROFESSIONAL SECRECY IN THE FRENCH COURTS.

The "Jour. de Med. de Paris" gives the particulars of a recent suit involving a physician, which has caused much discussion in France. Dr. A. has for twenty years been the official, duly appointed by the municipal authorities of Marseilles, to pass on and certify the applications for committing insane persons to asylums. In a recent case a man was sent to an asylum, but was released after his attack of insanity had subsided, and sued his wife for having had him unjustly declared insane. She cited as witnesses the attending physicians, among them Dr. A. The latter, believing that his certificate was a public matter, knowing that it had passed through a number of hands, did not hesitate to testify to the effect of its contents. The husband at once sued for \$4,000 damages for violation of professional secrecy. The local court acquitted Dr. A., as it was generally understood that his certificate was a quasi-public matter, but the case was appealed, and the higher court decided against him, claiming that he had certainly violated professional secrecy in the affair.

Judicial Decisions.



Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

CHRISTIAN SCIENTIST CONVICTED OF MANSLAUGHTER.

The practice of Eddyism in Ontario has received a severe set-back at the hands of the Ontario Court of Appeals in the judgment delivered by that court in the case of King against a citizens of Toronto who permitted his boy, aged 16, to die of diphtheria without providing him with necessary medical treatment. At the first trial the jury had found the prisoner guilty of manslaughter and the defendant's counsel had taken the case to the Court of Appeals. The decision of the Court of Appeals states clearly that they think the learned judge at the first trial did properly charge the jury that the term "necessaries of life," as appears in the criminal code, includes medicine and medical treatment.—J. A. M. A., Medico-Legal Bulletin, August, 1903.

NOT PRACTICING MEDICINE.

The People of Illinois vs. Smith, an action for a penalty for violating Laws 1899, p. 273, "An act to regulate the practice of medicine," the Appellate Court reverses the judgment of the Circuit Court without remand. Where a traveling optician in his advertisements invited persons afflicted with dizziness, neuralgia, etc., to visit him, but stated that he did not give medical or surgical treatment, and, in fact, his business consisted solely in fitting and selling spectacles, he did not treat, operate, or prescribe for any physical ailments of others, within Laws, 1899,

p. 275, p. 7, defining the practice of medicine, or, as an itinerant vendor, profess to cure or treat diseases by any drug or application, as prohibited by section 8.

STATEMENT OF INJURED PERSON TO PHYSICIAN.

The Supreme Court of Ohio holds, in *Pennsylvania Company vs. Files*, a personal injury case brought by the latter party, that testimony of a physician, who had made an examination of the party before the trial, as to statements made by the party at that time, in regard to his suffering from the injury, was incompetent as evidence, the examination not having been made for the purpose of treating the party, but for the purpose of enabling the physician to testify as an expert at the trial. Such evidence, the court says, is to be distinguished from evidence of a like character, given by a physician called on for treatment. In such cases, what the patient may say to his medical adviser as to his condition and how he suffers may be admitted. It is to be presumed in such case that he states the truth, as it is to his interest that he should do so, and not mislead the physician by false statements as to his conditions. He is under a strong motive in such case to state the truth, and it is on this ground that such evidence is admitted. But where the physician is called on, not for the purpose of treatment, but to enable him to give evidence in a pending or proposed suit, no such sanction of the truth of what he says exists. On the contrary, he is under a strong motive to deceive the physician, and, not being under oath, may, with impunity, make such statements as he sees fit. What he says to a physician under such circumstances is self-serving in character, and should not be admitted in evidence; and, for a stronger reason, like statements made to third persons, not physicians, under similar circumstances, are incompetent.

LIABILITY FOR SERVICES RENDERED SMALLPOX PATIENT.

The Supreme Court of Georgia says that, taking the evidence in the case of *Smith vs. Hobbs*, an action for professional services, most strongly against the party suing and most favorably for the one sued, it appeared that the party sued and other members of his family were afflicted with smallpox in the city of Gainesville; that the city authorities caused his house to be quarantined, and sent the party suing as a physician to treat

him and other members of his family, all this being done without consulting the party sued, that the latter at no time employed the physician, or agreed to pay for the services rendered him, but simply received the services as rendered, acting on the assumption that, as the city authorities had taken control of his premises, and had sent a physician whom he had not employed, and who was not his family physician, they intended to provide for all of the expenses incident to the treatment of the disease with which he and other members of his family were afflicted. There was evidence for the party sued authorizing the jury to find that at the time the services were rendered the conduct and sayings of the physician were such as to indicate to him that the physician did not intend to hold him liable for the services so rendered. This was the case taken most favorably for the party sued. Of course, there was evidence to the contrary, and which, the court says, would have authorized a finding for the physician. But the jury rendered a verdict in favor of the party sued; and the court holds that the evidence authorized it. In sections 1472-1474 of the political code it is provided that, when smallpox has appeared in any city, the city authorities are empowered to provide a suitable hospital for those afflicted with the disease, and to furnish them with medical and other attention; and also authorizing the city authorities to provide quarantine regulations to prevent the spread of the disease, but not to require any person to leave his home and go to the hospital when he is properly provided for and quarantined elsewhere at his own expense; the act providing that the city shall not pay the expenses of any person so situated. The court holds that the provision that the city shall not pay the expenses of a person quarantined and provided for at his own home is applicable only in cases where a suitable hospital has been provided, and the person afflicted has been given an opportunity to be carried there, and has insisted on being treated at home. The party sued had a right to show that he was not liable, and evidence that another was liable for the account sued on was a proper matter to be considered by the jury in determining the liability of the party sued. It was not necessary that there should be any special plea setting up that the city was liable to authorize evidence of its liability for the purpose of showing non-liability on the part of the party sued. The city was not a party, and the judgment in this case would not bar a suit against it to recover the amount of the claim, though the question of whether the city was liable, the court says, was not involved in this case and was not passed on.

SUFFICIENCY OF REPORTING BIRTHS BY MAIL.

The case of the Department of Health of the City of New York vs. Owen was brought to recover from a physician \$100 penalty for an alleged failure to report facts relating to the birth of a child, as required by the city charter. The physician testified that he made a written copy of the register of the birth, and mailed it, inclosed in a properly addressed, postage-paid envelope, to the department within ten days after birth. The only testimony on behalf of the department to indicate that this report was not received was given by the assistant register of record, who testified, in substance, that he had personal charge and control of the records of births; that they were received by him personally; that he made a search of the records of the department for a certificate of the birth in question; that there was no such certificate there, and that the usual custom prevailing in the department as to notification by a physician of a birth was that such notice, as a general rule, was mailed and sent through the postoffice. From this evidence, the Appellate term of the Supreme Court of New York says, the conclusion followed that the physician's report, having been duly mailed, was received by the department, as its testimony on this point did not go so far as to amount to a denial that it was received. The fact that it may not have been among the records of the department at the time search for it was made was not evidence that it was not received there by mail in due course. It may have been received, and afterward lost or mislaid. But it was contended that even if this report was mailed by the physician, still the statute was violated; it being claimed that the report should have been taken personally to the office of the health department and left there. The court holds that this construction of the statute was violated; it being claimed that the report should have been taken personally to the office of the health department and left there. The court holds that this construction of the statute could not be sustained. It says that the statute does not require the physician to report a copy of his register as "notice" to the health department, in order for it to protect itself against an invasion of any of its rights. The report is required in order that a public record may be made from it, and there appears to be no good reason why the in-

formation required by the statute can not be imparted to the health department as certainly by mail as by requiring physicians to attend personally at the department for the purpose of handing in these reports. There seems to be no public necessity calling for the construction of the statute in the manner urged by the department. If it were so construed, there would, in all probability, be more failures of physicians to make their reports in person at the department than there are now when they may adopt the more convenient method of mailing these reports. Furthermore, the court says that the statute which was the basis of this action was penal in its nature, and its terms should not be enlarged by judicial construction, while the legislative intent as expressed in the statute could be effectively accomplished without the interference of the court.

INJURY TO PRACTICE AND USE OF MORPHIN BY WIFE.

The Supreme Court of Georgia holds, in the case of Smith vs. Smith, that, in the trial of an action for divorce, brought by a husband against his wife on the ground of alleged cruel treatment, it is not error to reject evidence that she constantly quarreled with, abused and insulted her husband, and, by slandering him to her neighbors, injuriously affected his practice as a physician, etc. Nor is it error, in the trial of such a case, to reject evidence that the wife was an habitual user of morphin, and almost all of the time under its intoxicating influence.

PHYSICIANS APPOINTED BY COURT AS WITNESSES.

The Supreme Court of Washington holds, in the personal injury case of Smith vs. City of Seattle, that an instruction was properly refused which was requested to the effect that two physicians who had been appointed by the trial court as a commission to make a physical examination of the party injured were witnesses neither in behalf of the one side nor the other, and this fact the jury might take into consideration in determining their credibility, interest in the result of the case, and the weight to be attached to their testimony. The Supreme Court says that, while it was true that the physician in question has been appointed by the court to make the examination, yet they testified as witnesses called by the city. To have given the instruction would have been for the court to say, inferentially at least, that the jury was at liberty to give greater credence to the testimony of these witnesses because they had been selected by the court.

This would have been clearly erroneous. Their testimony must be subjected to the same tests as that of other witnesses, and it would have been error for the court to distinguish it as being subject to any different rule.

EVIDENCE OF RIGHT TO PRACTICE—SUING MARRIED WOMEN.

The Supreme Court of Georgia holds, in the case of *Trentham vs. Waldrop*, that where a physician brings an action against a patient to recover for professional services and alleges that he is a duly licensed, practicing physician, and this allegation is denied by the party sued, a certificate of the clerk of the Superior Court of the county of his residence, showing that such a physician duly registered prior to the year 1895, in compliance with the provisions of section 1479 of the Civil Code, is *prima facie* evidence of his right to practice medicine. There, in such an action, it appears that the party sued was a married woman, having a separate estate, and the physician testifies that she, before the services were rendered, agreed to be herself responsible for payment for them, while the party sued pleads and testified that she made no such special contract or promise, there is such a conflict in the evidence as should be submitted to the jury, and it is error to direct the jury to find in favor of the party sued on this issue.

THE UNLAWFUL PRACTICE OF MEDICINE.

Mayer is a justice of the Court of Spécial Sessions of New York City. Before him are tried many cases of unlawful practice of medicine. His paper is therefore of special value. The law of New York, as it now stands, is defective. The courts are called upon, not only to decide questions of fact. i. e., whether the defendant is actually guilty, but must also decide questions of law, since the statute does not define what the practice of medicine is. There are other difficulties which render the obtaining of a conviction difficult. The author makes three suggestions which he believes would, if adopted, conduce to greater public security. These suggestions are: (1) The definition, by an act of legislature of what constitutes the practice of medicine. (2) The abolition of the minimum punishment clause now in existence. (3) The adoption of some method by which injurious medical advertisements shall be excluded from the daily press.—Exchange.

AN INMATE OF A HOSPITAL.

In the case of Farrel vs. Security Mutual Life Insurance Co., the insured was asked if he had ever been an inmate of any hospital, and answered, "No." But it appeared that he had been admitted to a hospital, where he remained for from one to two weeks. A physician testified that he had visited him professionally, and suggested his removal to the hospital; that he went to the hospital, and examined him for twenty minutes to half an hour very carefully; that he was accepted at the hospital as his private patient. The physician further testified that he found nothing the matter with the man: that he made an entry of rheumatism in order to qualify him to be entered at the hospital, and that he ordered his removal to the hospital because he could give him better care, and under more satisfactory circumstances, than he would receive where he was. He explained that by better care he meant "better environment"—under better conditions—and that by "better conditions" he meant, "Well, if he touched a button he could have a servant come to his room any time day or night, or if he wanted a change of blankets, or a hot drink—any want could be attended to at once; that he sent him there to put him where he could get good bed and board." The United States Circuit Court of Appeals, Second Circuit, holds that, even if the question could be considered, as contended, as an inquiry whether the insured had been admitted to the hospital for medical treatment for disease, the uncontradicted evidence as to the circumstances under which he was taken there under advice of a physician as his patient, and the character of his occupancy, satisfied this requirement. And in view of the positive statements of the physician as to said facts the court would not have been justified in submitting the case to the jury on the theory of ambiguity or uncertainty because the witness said he sent him there simply "to get good bed and board." If this statement be not rejected as either palpably untrue or an unjustifiable conclusion of the witness, it must be so interpreted as to apply to the case of a patient who required the sort of treatment implied by better conditions, environment, and service.

WAIVER OF PRIVILEGE EXTENDS TO FUTURE TRIALS.

The Second Appellate Division of the Supreme Court of New York, in considering, in the case of Schlotterer vs. the Brooklyn and New York Ferry Co., the effect of the provision of the statute that the express waiver of privilege required must be "on the trial or examination," says that the purpose of the statute is to cover the relation of physician and patient from possible humiliation or distress, not to enable him to win a lawsuit. If the patient once permit the physician to testify, there is no longer any reason at any time for excluding competent testimony under the plea of public policy. If the patient once voluntarily renounce the protection of the statute, his waiver is everlasting and irrevocable. So it thinks that the purpose of the provision referred to was not to limit the continuous force of a waiver, and thus to permit the patient to use the statute once as a shield and anon as a sword, but by way of further assurance that the waiver had been formally, clearly, and certainly made. Nor does it think that the language of the statute, in the further provision that the waiver "must be made in open court on the trial of the action or proceeding," authorizes a construction which affords the privilege, notwithstanding the reason for its continuance has ceased to exist. It says that it simply means that, when the waiver is made, it must be made in open court on a trial of the action. It thus affords a safeguard that the waiver was duly made, but not a shift of the waiver, once made. And the court holds that a trial was a trial of the action, within the purview of the statute, where it appeared that, after trying her case after a nonsuit, the party suing began anew, but proceeded on the same cause of action against the same defendant.—*Jour. Am. Med.*

WOMAN "HEALER" FOUND GUILTY.

A verdict of guilty was returned recently by the jury in the United States Court at Jacksonville, Fla., in the case against Helen Wilmans Post. The charge against Mrs. Post is that she had devised a scheme to defraud and had used the United States mails to further the scheme. She claimed to be able to heal by mental science and gave "absent treatment" to thousands. The court has not yet passed sentence, and the defense has been given ten days to prepare a motion for a new trial. There are eleven other indictments against Mrs. Post and her husband, C. C. Post, and her son-in-law, Charles C. Bergman.

FIVE MEDICAL PRACTITIONERS INDICTED.

On complaint of the Norfolk, Va., Medical Association, the corporation court grand jury recently returned indictments against J. Weston Callis, L. J. Hayden, James Harvey, Moula Bakhsh and Edward Albro, alias "White Chief," charging them with practicing medicine without a certificate from the Virginia State Board of Medical Examiners. The cases have not yet been set for trial, though it has been announced that they will come up at the approaching term of court.

The following were the members of the grand jury: Thomas Townsend, foreman; F. H. Thomas, M. McKeivitt, Louis Drewrey, W. W. Hosier, W. T. Hyslop and F. E. Nottingham.

The Norfolk Medical Association instituted an investigation several weeks ago with a view to suppressing what the association termed "quack doctors," and the aforementioned indictments grew out of the crusade in question.

THE X-RAY IN RUSSIA.

The Russian police make practical use of the X-ray. At Kief. recently, a drunken prisoner was robbed of about \$300 by cellmates. They denied the crime, but two-thirds of the money was found in their clothing and the X-ray revealed the other hundred dollars, which was in gold, snugly stowed away in their respective interiors. They had swallowed it. Against detectives provided with the X-ray, the radium ray, and other marvels yet to come, the criminal of the future will need to be armor-plated like a battleship.—D. Med., March 7.

EIGHTY THOUSAND DOLLARS FOR PERSONAL INJURES.

In the case of the International and Great Northern Company vs. Mynahan, mentioned February 6, 1904, page 394, Moynahan received \$20,000, and not \$80,000. The Journal's attention has been called to the fact that an error was made in the original report to the court proceedings.—Jour. Am. Med.



Medico-Legal Bulletin.



ORIGINAL ARTICLES

EXPERT WITNESS.

We print under this head part of an article which appeared in the Journal of American Medical Association, March 5, 1904, which was delivered by Algernon T. Bristow, M. D., before the New York State Medical Society. The article is one of great merit and we regret that we have not the space to print it in full.

To the medical profession there is no part of the administration of justice so important and of such interest as that which deals with medical expert evidence. Whatever else may be inefficient or defective in our present jury system, it is the present method of securing and presenting medical testimony to the jury that grieves and injures us.

The public judges any class of men by their appearance in public; and, although our public functions are but incidents in our lives, merely occasional, unlike our conferers of the law and ministry, nevertheless the people continue to judge us according to our appearance when summoned to the courts to testify. In a recent article on expert testimony Judge Woodward says of a prominent surgeon in this state, that he was asked the following question by the counsel for the prisoner: "Isn't it fair to assume if I had money to pay the physicians for their time that I could step out here in the city and secure half a dozen competent physicians, who, in answer to the hypothetical question put by the district attorney, would give me exactly the opposite answer?" The witness replied. "I think it is." A survey of all the celebrated criminal cases of the past twenty-five years in which medical expert testimony has figured, would give ample proof of the truth of this answer. The record of the medical testimony in the countless damage suits which blockade the calendars of our courts would confirm it. Is it strange that the medical profession should occupy a lower plane in the public

estimation than it deserves? It is unfortunately true that the testimony of the medical expert as at present procured and elicited in our courts, is utterly untrustworthy, and has brought unmerited disgrace and contumely on a body of worthy and self-sacrificing men. In the same article occur the following quotations from judicial opinions: From an opinion by Judge Goodrich: "Paid experts, swearing for or against the sanity of a prisoner, according to the amount of the fee and the person who calls them." Judge Ramsey: "The sole difference between the expert and the advocate being that he makes his argument under oath and that he endeavors to add the weight of the oath to the opinion of the advocate." Judge Adams, of Canandaigua: "Expert witnesses are far more anxious to destroy each other * * * than to elucidate the particular question in issue."

Stability and permanence are in themselves highly desirable in any legal system. Constant changes in our rules of procedure would result in confusion and uncertainty, a condition of affairs intolerable in legal practice. To assume, on the contrary, that rules of procedure should never change, would give an authority and weight to precedent which ought not to prevail in the face of a proved necessity or desirability for a change. Many great changes have already been made in our law, as, for example, in the law of evidence. Says Professor Robertson in his article on law in the *Encyclopedia Britannica*: "It (the law of evidence) has been almost wholly transformed by direct legislative enactment, act after act having been passed as occasion pointed out defects in what had already been accomplished." Under proper circumstances, then, in so conservative a land as Great Britain, the rules of evidence have been modified and amended to conform to the changing spirit of the times and the larger development of the national life. It does not appear that these changes, important and radical as they must have been to justify Professor Robertson's phrase, "wholly transformed," have resulted in disaster to the British system of jurisprudence. It is possible, therefore, to bring about reformation in the long-established laws of a great state without wreck or wrong. That a change in the present system of selecting and presenting medical expert evidence is desirable, seems to be admitted by some very eminent jurists, although the opinions are not unanimous. Sir James Stephens expresses it as his opinion that the present system is perfect and in need of no change. An echo of this opinion is heard in Judge Woodward's article, in which he says: "I do not believe that the fault is in the system." It will be seen, therefore, that great legal experts differ on important questions

of opinion as well as great medical experts, although to read the caustic remarks emanating from the bench, we are led to believe that physicians always disagree, jurists never.

It will be agreed that consistency in the law is just as important and desirable as permanence, yet we do not find either entire consistency or strict logic when we inquire of the law as to what constitutes an expert. Thus, in an opinion before quoted, the judge said of the expert that he should be learned as well as skillful. So, too, Chief Justice Shaw, of Massachusetts, says: "An expert is a person of large experience in any particular department of art, business or science. * * * * It is because a man's professional pursuits—his peculiar skill and knowledge—enable him to draw an inference where men of common knowledge would be in doubt, that his opinion is admissible." But in *Hathaway v. National Life Insurance Company* (48 Vt., 335), the judge said: "A general practitioner is a competent witness. The law does not require the medical witness to have made a specialty of the subject to testify in relation to the same." It has even been held that a lawyer was a competent medical expert, who, sixteen years before, had attended a course of medical lectures, obtained a license from the state to practice, had practiced one year, and then abandoned medicine for law, which he had been practicing during the interval. It is doubtful whether this doctor-lawyer or lawyer-doctor, declared by another lawyer to be competent to give expert medical evidence, could have even described the circulation of the blood. In ludicrous contrast to this opinion is that of the judge in *McEwen v. Bigelow* (40 Mich., 215), in which it was held of a plumber, who had been long out of business, for twenty years, that, "this was a long time to be out of a business that must have changed so greatly in that time," and he was held not entitled to give expert testimony. The trouble with the plumber, evidently, was that he had not become a lawyer, in which case the views of a sympathetic court might have been those of the California judge just cited. It is not quite clear, says Rogers, whether a man must have been engaged in active practice at all. There is an Alabama decision that it is not necessary. This decision is supported by the opinion of Redfield (*Greenfield on Evidence*), "but generally nothing more is required to entitle one to give testimony as an expert than that he has been educated in the particular art or profession." Thus a stripling, who has just gained his degree, is put on the same footing, so far as his right to give expert testimony is concerned, with a man of experience and

distinguished attainment. The jury is left to decide on the relative weight which is to be given to the opinion of an impudent ignoramus and the learned and skillful expert described in another opinion. As an example of the evils of such a system, may serve: A man received a simple fracture of the lower end of the tibia in January, and was discharged from the hospital in February, with the fracture united, but with the slight edema that is usual in such cases after removal of the plaster of paris splint. There was never even any pretense that suppuration had been present, as the fracture was simple. In May, the man contracted a lobar pneumonia, from which he died. His widow brought suit on the ground that the fracture was the cause of the pneumonia. The medical witness for the plaintiff, I will not call him an expert, testified that the pneumonia was of septic origin and due to the fracture. In vain two professors, one of clinical medicine and the other of surgery, testified that this was an impossibility; that the plaintiff died of a lobar pneumonia, which bore no relation whatever to the fracture incurred five months previous. The intelligent jury gave the plaintiff a verdict, which, I am happy to say, was afterward reversed. Such a blunder was rendered possible by the loose and contradictory definitions of what constitute an expert.

Again, it may be said that it ought not to be possible for one lawyer to be able to retain a set of expert witnesses to testify on one side of a case, and for a second lawyer to get a second set of experts to testify on the opposite side. Such a criticism is perfectly just, and is particularly deserved in many of the damage suits which are so common in our courts today. There are lawyers known to the bar as "ambulance chasers," who have runners constantly on the watch for accident cases, of which they learn through the daily papers. These unscrupulous members of the bar, with the aid of the equally unscrupulous members of the medical profession, rob corporations of thousands of dollars every year. I can not say that I see any difference in the culpability, or that the doctor is more blameworthy than his principal, the lawyer, who brings the suit too often built up of manufactured evidence. They are a pair of precious rascals. I seek to excuse, neither. It is the system, however, which renders their partnership possible. If the law rendered this evil alliance more difficult, or perhaps impossible, justice would be the gainer as well as the corporations. No amount of scolding from the bench will be effectual. Bad men have never been made to mend the evil of their ways by mere denunciation. They do not fear the fulminations from the bench, provided a sentence

to jail does not follow. The householder who kept his silver on his doorstep might denounce the thief who robbed him of his treasure with the full vigor of an unbridled vocabulary. No one would doubt the sincerity of his wrath, and the police would doubtless catch the rascals if they did not run too fast. The neighbors, however, would come to the conclusion that the wisest plan to prevent the loss of their valuables would be to keep them in a safe. So it is better to amend a system which is known to permit an evil, and thereby prevent it, than to continue the system and imagine that anything can be accomplished by denouncing the criminals who are the direct offspring of the system itself.

The present law first paves the way for the appearance of witnesses as experts who may, nevertheless, be incompetent, then through the manner of their selection by the interested parties renders it almost impossible for them to be without bias, and finally proceeds to elicit their testimony by means calculated to gag the witness at exactly the point where his testimony becomes inconvenient to counsel or dangerous to the client. The hypothetical question, which is the method most frequently used in our courts for the purpose of eliciting the opinion of experts, is calculated rather to confuse the jury than to enlighten them, and frequently involves the serious legal fallacy of the *suppressio veri*. It is evident, if we were to continue to summon our jurors from all ranks of society without reference to previous education or presence of intelligence, this in itself constitutes a cogent reason why the evidence presented shall be clear and readily understood by even a limited intelligence and the most rudimentary education. There is a case (*Haish v. Payson*, 107 Ill., 365,) in which the hypothetical question covers two and one-half pages of the law reports. Hypothetical questions of less but still formidable length are common. In the *Guiteau* case, that of the defense comprises over 300 words, and Rogers states that the hypothetical question of the prosecution "is too long to quote." Only last week a hypothetical question was put to one of our ex-presidents, which took an hour to read. It is true that the question is not addressed to the jury, but to a witness; nevertheless, on this answer the jury must pass, and if the question is unintelligible or difficult to follow on the part of the jurymen, how are we to expect that their opinion of an opinion will be of value? The present legal status of the hypothetical question seems to be involved in as many contradictions as the legal view of the qualifications of the expert. Rogers,

in his work on expert testimony, said that hypothetical question is not improper simply because it includes only a part of the facts, and if framed on the assumption of certain facts, counsel may assume the facts in accordance with his theory of them, it not being essential that he state the facts as they really are. In *Cowley v. People*, 83 N. Y., Judge Folger lays down this dictum and the following comment: "If the facts are in dispute, and there would be no room for the hypothetical question, if the question must state the facts as they exist, since the jury are to determine what are the facts." On the other hand, in *Fraser v. Jennison*, 42 Mich., 206, the court said that a question "which assumes a state of facts, not warranted by the testimony, will not be allowed," and in our own state, in *Dellebar v. Home Life Insurance Company*, 87 N. Y., 79, the court said that the testimony should tend to establish the facts embraced in the question. Judge Moore, of the Supreme Court of Michigan, said: "If one fact supposed to be true included in the question is untrue, then the opinion of the physician would be valueless." It is difficult for the layman to reconcile opinions which seem so contradictory. Judge Folger's opinion seems to mean that a lawyer may propound to the medical expert a hypothetical question which shall state certain unproved facts essential to his theory of the case, but which shall suppress unfavorable facts, and then insist on a categorical answer which may involve an actual suppression of the truth which the witness is sworn to reveal.

I believe that the medical profession would be glad to see it abolished entirely in accordance with the recommendation of Judge Endlich, of Pennsylvania. If it is to be retained, it ought to be submitted on an agreed state of facts. In no other way can it be made use of without confusing the jury and of necessity antagonizing the experts. How can they be expected to agree if they testify on different statements of facts. Much time might be spent in discussing the substitutes for the hypothetical question, but the writer is conscious that there are limits to the forbearance of the most lenient audience. It has been his intention rather to throw into the strongest possible relief the faults of the present system which need correction than enter into a critical examination of the many different remedies which have been proposed. After all, in law as in therapeutics, it is better to attack the cause of an evil than to treat symptoms, and the investigators who have discovered the cause of a disease have gone a long way toward preventing it.

The matter concerns two learned professions. On the one hand stands the profession of the law, the protector of the

feeble against the mighty, the safeguard of all government, dispenser of equal justice. On the other stands the medical profession with high ideals of self-sacrifice, high standards of right and wrong—the wish to give of their best to individual and public alike. Shall these two great professions stand arrayed against each other on so vital a matter? Must there be no further progress toward reform? Shall we continue to waste our breath and printer's ink in mutual recrimination? The problem is difficult, but not impossible of solution, and it must be solved. The profession which boasts a Taney, a Marshall, an Evarts and a Taft, will not always refuse justice to a profession which has given to the world a Jenner, a Koch, a Behring and a Reed.



State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

PATIENTS WITH BELLS.

The death of Dr. Florence W. Hunt, of Chicago, for years a member of the Illinois State Board of Health, recalls the story of her discussion of a paper on castration. Dr. J. B. Murphy reported a double castration in which, "for cosmetic purposes," as he expressed it, he inserted two celluloid balls. Dr. Hunt inquired if this would likely become customary in the future, and upon being assured that it probably would, she remarked: "Then I would suggest, Mr. President, that in future the matter be made the subject of a special law, in the interest of women, requiring that every such a man be compelled to wear a bell!"

RESPONSE TO CALLS.

A state license to practice medicine bestowed upon a physician is held in Hurley vs. Eddingfield (Ind.), 53 L. R. A. 135, to impose no obligation to respond to every call, so as to render him liable for arbitrarily refusing to attend a sick person, although no other physician is procurable.

DOCTORS AS LEGISLATORS.

Four per cent. of the members of the Iowa State Legislature are physicians; and no quacks among them. If other states would do as well as Iowa, there would be less disreputable work at some capitols.

MOTIVE IN MALPRACTICE CASE.

The Wisconsin statutory provision that no action for personal injuries shall be maintained unless notice in writing of the injury, stating the time and place of its occurrence shall be served on the person causing the injury, within one year after such time, the Supreme Court of Wisconsin holds, in *Meisenheimer vs. Kellog*, is in the nature of a statute of limitations, and does not make the giving of the specified notice a condition precedent to a cause of action for malpractice. One of the technical consequences of this is, as brought out in this case, that, being a statute of limitation an objection that the notice was not given must be taken either by answer or demurrer, or it is waived, and the court even doubts whether the objection can be taken by demurrer, under the present Wisconsin statute regulating the grounds of demurrer.

MEDICAL LEGISLATION IN NEW YORK STATE.

The licensed medical practitioners of the state are understood to be behind bills which have been introduced in the Legislature to prevent opticians from prescribing glasses for defective eyes, and to prevent any newspaper, periodical, except a surgical magazine or periodical, from printing any picture of a man, woman or child, or any part or parts of the human body in connection with the advertisement of patent medicines. The latter bill makes a violation of its provision punishable by a fine of \$25 for each offense.

BILL IN RESTRAINT OF MARRIAGE.

Assemblyman Matthews is soon to introduce a bill at Albany providing that all persons must obtain a physician's certificate before securing a marriage license. The bill has for its object the prevention of marriage by the insane, imbecile, and those affected with contagious disease.—N. Y. and Phila. Med.

RECIPROCITY IN MEDICAL LICENSURE.

The board of medical supervisors of the district has submitted to the commissioners a draft of a bill to authorize the board to issue licenses to practice medicine to licentiates of corresponding boards of other jurisdictions.—J. A. M. A.



Medico-Legal Bulletin.



PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. 2

MAY 1904

No. 8

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

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"TO AVOID PUBLICITY."

There would be little argumentative value in delving deeply into a learned discussion of the efficiency of defense. The prophylactic in all things has become axiomatic. This must especially be true in the case of the professional man.

If the professional man would spend the same time, study and energy in the consummation of a business career, his remuneration would be a hundred-fold. That learned, gray-haired seer who aided in moulding your primitive efforts told you in that first college lecture that you were entering upon a life of thought and honor, the ultimate ambition of which would be professional reputation.

You labored, you sacrificed, you fought and finally achieved your end.

You have since found the "tenor of your way" beset with many perils, and most flagrant of them all is that insinuating, leering threat, "If you wish to avoid publicity in this matter you can call at my office to effect a compromise." The crafty lawyer sees the vulnerable point. He lays no stress upon the contingency of a judgment, but "to avoid publicity."

The Physicians Defense Company recognizes this situation. It is a company founded upon ethical plans for an ethical pur-

pose. At the juncture where the vicious patient and his co-partner in viciousness attacks, this company defends, and its defense is thorough, competent and to the last ditch.

The Physicians Defense Company defends that which the professional man holds sacred—his care, his skill, his learning; and no matter how careful, skillful or learned, he is just as open to these attacks as his less fortunate brother. In fact, the experience of this company has been that those who have the most to defend are those most beset. The quack has nothing to defend and nothing vulnerable to attack.

The Physicians Defense Company is an association of men of standing professionally and commercially, who have builded a cause founded upon a purpose.

Legal propositions often confront the practitioner. The legal department of this company, skilled in this special line, relieve him of his doubt. When a threat of suit confronts him they take the burden from his shoulders and lend every effort to his cause. Co-operate with this company, its a mutual benefit. Look it up.

"An ounce of preventive is worth a pound of cure."

CLAIMS THE NAME.

The Physicians Defense Company, of Fort Wayne, Ind., has instituted suit in the United States Circuit Court to restrain the Maryland Casualty Company, whose principal business is in Baltimore, from using the terms "Physicians' Defense Contract" or "Physicians' Defense Policy" in connection with its business. The use of these terms for the contract written and sold by the Maryland Casualty Company is alleged in the bill of complaint to be an unnecessary and unlawful violation of the rights of the complainant and an interference with the good will of its business which, if not restrained by an injunction of the court, will work irreparable injury to the complainant. It is also alleged in the bill of complaint that the value of the good will and corporate title of the complainant and the name of its business contract greatly exceed \$10,000, and that \$2,000 profits have been diverted from the complainant by the Maryland Casualty Company.

The Physicians' Defense Company, the complainants, the bill states, is a co-operative society formed by physicians and surgeons for the benefit of physicians and surgeons. Then the bill continues: "It grew out of a realization on the part of its formers of the fact that every medical case and every surgical operation involved an inherent responsibility for the exer-

cise of adequate skill and care; that it was of the highest importance that this responsibility should be maintained to the greatest extent, but at the same time that those physicians and surgeons, who, with utmost skill and care practiced their noble profession, should be protected against the disappointments necessarily incident to the frailty of the human organism and the cupidity and spleen of evil-minded persons."

The bill of complaint then explains that the business of the company consists in maintaining a staff of lawyers and experts especially skilled in medical practice and in the trial of malpractice cases. For an annual sum it assumes entire charge and responsibility for the defense of all suits for malpractice which may be brought against the holders of its contracts.

The business of the complainant, it is stated, was an entirely new departure, and because it filled a long-felt want among the medical profession, it soon became popular. To designate the identity and the business of the company the "Physicians Defense Company" was adopted as its title, and its contract was given the title of the "Physicians' Defense Contract."

The Maryland Casualty Company, it is alleged, in violation of the rights of the complainant and without legal warrant, has engaged in a business identical with that of the complainant and is writing and selling a contract identical in phraseology with that of the complainant. This contract of the defendant, it is alleged, is called "Physicians' Defense Contract" and "Physicians' Defense Policy," 'the same as the contract of the complainant.

The bill of complaint was sworn to by S. Canby Jenks, general agent of the complainant for Maryland, and was filed by Arthur Steuart, attorney.—Baltimore Sun.

Physicians are requested to report to the Physicians Defense Company any cases which may come to their notice in which contracts or policies so called issued by other companies have been sold or bought as and for the only genuine "Physicians' Defense Contract" of the Physicians Defense Company, of Fort Wayne, Ind.

Physicians' defense contracts are growing rapidly in popularity. There are many thousands of these defense contracts issued by the Physicians Defense Company of Fort Wayne, Ind., now in force. Blackmailing suits for malpractice are contagious, the schemers who hear of one straightway casting about for some prosperous physician upon whose reputation they can prey.—Exchange.

THE X-RAY AND OUR SURGICAL RESPONSIBILITY

Suits for damages from malpractice occur far more frequently as a result of treatment in cases of fractures and dislocations than from any other cause. It is becoming a matter of considerable importance how far our responsibility may be increased by the neglect, in any given case, to make use of the advantages of radiography. Leaving out those cases in which the accident occurs where no X-ray apparatus is available, and others in which the nature of the injury renders its employment practically impossible, there remains a certain number in which this method of investigation is quite feasible. It is a regrettable fact that in some instances in which bad results occur the use of radiography would probably have saved annoyance to both patient and surgeon. We are all aware that certain fractures are very often diagnosed and treated as sprains, and that the large amount of callus commonly given out under the treatment instituted is apt to result in very considerable impairment of function. We also know that the very thorough study of fractures made of late years in connection with radiographic investigations shows that in those involving a joint even the most expert are apt to err in diagnosis. It is in this very class of cases that we most frequently have suits for malpractice. These fractures are apt to be far more complex than is revealed by mere outward appearance and investigation, and, in certain situations, an injury that might appear comparatively unimportant may give rise to quite disastrous impairment of function.

It can hardly be asserted that the use of the Roentgen rays will give absolute information in all cases of fractures. Perfection is not yet of this world. We must, however, admit that any measure that is likely to materially add to our knowledge in any individual case, and which is evidence of additional and painstaking care in its treatment, must not only greatly improve our results, but also lessen our responsibility to a considerable extent in the presence of legal complications. The obtaining of a perfect diagnosis cannot make up for the adoption of an erroneous method of treatment, but the skillful surgeon will be able to eliminate some causes of failure. Results in general must certainly be greatly improved by a thorough knowledge of the exact condition to be met.—*International Journal of Surgery.*

Judicial Decisions.



Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

POST-GRADUATE SCHOOL NOT LIABLE FOR MAL- PRACTICE.

In the case of Collins vs. the New York Post-Graduate Medical School and Hospital, it appeared that the plaintiff, being ruptured on the left side, applied for admission to the defendant's hospital for the purpose of undergoing an operation, bringing with him a card from his own physician stating that fact, and giving the true location of the hernia. The house physician examined him and confirmed his doctor's diagnosis. The second day he was placed under the influence of an anesthetic, and the operation performed in the presence of the students, after a preliminary lecture to the class by one of the attending physicians. The operation was performed on the right side, which was in a perfectly healthy and normal condition, and the plaintiff was obliged to and did afterward submit to another operation at another hospital for the removal of the hernia diagnosed by his doctor. The surgeon who performed the operation on the wrong side had been subjected to a competitive examination before being accepted by the defendant's board of examiners, and, before that operation, was regarded by the defendant as skillful and competent. The defendant by its answer denied the negligence alleged, and asserted, by way of a separate defense, that its hospital was a charitable institution; that the medical and surgical attendance and ministrations furnished the plaintiff were furnished free; and that they were so accepted by him. True, he paid \$8 weekly, during the four weeks he was in the hospital, but the testimony showed that was a charge made those able to pay it for room, board, nursing, medicines, dressings, and the services of the house staff—everything except a medical fee, nothing ever being charged for medical services, though gifts to the hospital might be made in lieu of payment of such fees by

emergency patients. Under these circumstances, the Second Appellate Division of the Supreme Court of New York holds that the complaint was properly dismissed. It says that, however opinions may differ on the question of the policy of exempting charitable institutions from the ordinary rule respondeat superior, or "let the principal answer," the law is too well settled in that state to permit a recovery against the institution for the wrong committed by the surgeon who operated upon the plaintiff gratuitously. While the precise question does not yet appear to have been passed on by the Court of Appeals, it has been decided adversely a number of times at the circuit and general terms. It says, too, that many of the cases cited from other jurisdictions in harmony with this view are authority for the proposition that the fact that the institution receives pay patients does not change its status as a charitable organization. And it holds that the fact that the defendant charged tuition fees, and that the operations were a necessary incident to successful teaching, and that in that sense the defendant might be said to have been paid for the operation, did not change the relation of the parties to each other. In the performance of the operation, so far as the plaintiff was concerned, the defendant was engaged solely in charitable work; and its corporation must therefore be regarded as a charitable institution, as to him, in that respect. When it had furnished a surgeon selected with proper care, and with no reason to believe him to be negligent or incompetent, it had fulfilled its duty, and, as it did not control him in the performance of the operation, it must be held free from liability for his want of care.

TELLING CHARACTER OF INJURY NOT WAIVER OF PRIVILEGE.

The Third Appellate Division of the Supreme Court of New York says, in the case of *Dunckle vs. McAllister*, that no court, it believes, has yet gone so far as to hold that it is a waiver of the right conferred by statute to enjoin secrecy in an attending physician, when all that can be said is that the patient himself became a witness and told the character of the injury he was suffering from. That appearing to be all that the patient did in this case, the court holds that there was no error in excluding, upon his objection, the opinion of certain physicians, formed from an examination of his wound while attending him as a patient, that it was not a gunshot wound, but the result of a blow.

COMPETENT TO TESTIFY AS AN EXPERT ON INSANITY.

A physician called as a witness in the murder case of the State of Washington vs. Boyce said that he did not like the word "expert;" did not like to call himself an expert. On the other hand, he said that he considered himself enough of an expert on insanity to examine people, had even deprived them of their liberty in any asylum by his knowledge of insanity, and that he had done it a great many times, but that he was not a specialist on insanity. And his whole testimony showed that he drew a distinction between an expert and a specialist. In other words, while in the first part of his testimony he would not say that he was an expert, saying that he did not like the word "expert," he did say that he was competent to testify as an expert. The testimony, as a whole, the Supreme Court of Washington holds, did not show that he was not competent to testify as an expert.

AGGRAVATION OF INJURY BY IMPROPER TREATMENT.

The Appellate Court of Illinois, First District, holds, in Chicago City Railway Company vs. Cooney, that if the negligence of that company was the direct cause of the injury in question, and it was simply aggravated by some improper treatment by medical attendants through no fault of the injured party or lack of care on her part in selecting such attendants, then the mere fact of such aggravation of the injury would not preclude a recovery for the injury in the suit against the company.

PERMITTING EXPERT WITNESSES TO REMAIN IN COURTROOM.

The Supreme Court of Louisiana holds, in the homicide case of State vs. Forbes, that a ruling of the court permitting expert witnesses to remain in the courtroom during the trial is not ground to set aside the verdict. The rule, it says, is largely left to the discretion of the trial judge.—Jour. Am. Med.

RESPONSIBILITY FOR COUNT OF SPONGES IN SURGICAL OPERATIONS.

Many will recall the suit for malpractice brought some time ago against a surgeon of Columbus, Ohio, for the death of a patient from a gauze sponge which had been left in the abdomen after a gall-stone operation. The operation had been made in a public hospital and the head nurse of the hospital had been personally in charge of the sponges. In response to the surgeon's inquiry, thrice repeated, she had assured him that all her sponges were accounted for, and the abdomen was closed. Recovery was prompt, but some two months later observation of the bowels supervened and an operation, made when the patient was practically moribund, revealed the presence of a sponge as the cause of the obstruction. The attorneys who instituted the suit, while admitting that the surgeon himself had adopted the usual precautions and that the death was the result of the act of the nurse, claimed that the nurse was technically the agent of the surgeon and that the latter was therefore responsible for her blunder. A similar suit, and on similar grounds, was instituted about the same time against an Atlanta, Ga., surgeon. The Atlanta case was tried some months ago and the surgeon promptly acquitted; the individual responsibility of the nurse having apparently been proven to the satisfaction of the jury. The decision in the Atlanta case is supposed to have been the actuating cause which recently led the attorneys at Columbus to withdraw their suit, at their own costs, and institute proceedings against the hospital where the operation was made. This suit has only just been filed and the outcome will be watched with much interest, since the suit presents some novel features. The decision in the Atlanta case and the withdrawal of the suit in the Columbus case will go far to establish the principle that when the surgeon is operating with a graduate nurse in charge of the sponges he can not be held responsible for her carelessness, unless from previous experience he knows her to be untrustworthy.

CONTRACT BY EXPERT FOR PERCENTAGE OF JUDGMENT IS INVALID.

The Appellate term of the Supreme Court of New York holds, in the case of *Laffin vs. Billington*, that a contract by a physician to give expert testimony for the plaintiff in a personal injury case and to receive as his pay a percentage of any amount realized, is invalid.

MEDICAL ASPECTS OF ACCIDENTS CAUSED BY THE ROENTGEN RAYS.

Carl Beck cites a number of instances in which suit has been instituted for accidents and burns resulting from Roentgen ray treatment, and points to the diversified character of opinions rendered by court and juries. He says: In severer cases it appears to be natural that the patient is only too much inclined to blame his examiner. Whether the operator was negligent or not seems to be immaterial to the great majority of the injured; all they see are the consequences. Although with our present means it should not appear difficult to settle the question whether the physician has committed negligence or whether he or his patient is the victim of unfortunate circumstances, there is hardly any subject in the field of medical jurisprudence where juries, judges, and experts disagree as much as in this field. The decision of the courts in this country, as well as in Germany, England, France, and the Netherlands, illustrate a deplorable state of affairs. French courts excelled in decisions against physicians, especially in all cases in which the corpus delicti has consisted in injury to the complexions of the fair sex.—A. B. C.

AMERICAN DOCTORS MAY NOT PRACTICE.

The Supreme Court of Appeal at Berlin, Germany, recently handed down a judgment to the effect that the degree of Doctor of Surgery conferred by numerous American colleges will not henceforth be recognized in Germany. The ground for this contention is that the American colleges are private institutions not supervised by the government, and that it is not desirable for the German public to be led to believe that the degrees of the United States are equal to those granted by German universities which are controlled by the state. American dentists in Germany, labelling themselves doctors, are liable to severe penalties. The sole exception of this ruling is Ann Arbor College at Ann Arbor Mich., where dental degrees is recognized as legal currency in Germany.

SURGEON PREVENTED FROM REDUCING DISLOCATION.

The Appellate Court of Illinois, Third District, holds, on the second appearance before it of *Littlejohn vs. Arbogast*, 95 Ill. Appl., page 605, that if the surgeon charged with malpractice was prevented from reducing the dislocation of his patient's hip

by the refusal of the latter to submit to an operation, he could not be held liable for damages resulting therefrom. It is the duty of a patient, it holds, to submit to the necessary treatment prescribed by his physician or surgeon. If the patient is delirious and can not be made to understand the necessity of the treatment proposed, the physician or surgeon may co-operate with the patient's immediate family and resort to reasonable force. If the patient is in that condition and the members of his family having him in charge refuse to allow the proposed treatment, then the physician or surgeon would not be required to use force. Surely he should not be held liable for injury to limb or health resulting from a failure to use the proposed treatment.

CAN NOT COMPEL WITNESS TO EXHIBIT LEG—COMPENSATION.

In the case of McKnight vs. Detroit and Mackinac Railway Co., brought to recover for medical and surgical services rendered to a number of persons injured in a train wreck, one of those treated was called as a witness for the railway company and asked to exhibit his leg to the jury. This he declined to do, and the trial court refused to compel him to do so. The Supreme Court of Michigan holds that this ruling was correct. It distinguishes this case from one where the question was whether a party to an action could be required to submit her arm at the point of an alleged fracture, where such exhibition would cause no shock to the sense of delicacy, in which the decision was rested on the ground that, where a person appeals for justice, he impliedly agrees in advance to make any disclosure that may be necessary to be made in order that justice may be done. It says that this witness occupied no such relation to the cause, and objected to exhibiting his leg, and the Circuit Court correctly ruled that he had the right to so object. It was requested that the jury be instructed, in effect, that there were no amounts agreed on with the railway company for the services performed or to be performed, and that, if it was liable at all for any professional services rendered, it was liable only in such an amount as would be reasonable and fair under all the circumstances; that the party suing had not the right to fix an arbitrary fee, nor could any number of physicians agree on a fee to be charged. They were entitled to receive, if anything, what their professional services were worth in the community in which they rendered them, and no more. The circuit judge charged the jury, in substance, that, in estimating the value of the physician's

services, they should consider the professional skill and the experience of the physician, the nature and character of the services rendered, the difficulties and the nature of the case, and the amount of services rendered, and clearly limited the recovery to such a sum as, on the evidence, the jury should find would compensate the party suing for services rendered in this case. The Supreme Court thinks this sufficiently covered all that the company by its request had the right to have given to the jury. It says that it necessarily excluded the fact that an arbitrary fee might be fixed by the party suing or by any number of physicians; and, had the request been given, it might have led the jury to believe that the purpose was to discredit the testimony of the witnesses for the party suing who were physicians, and who had substantially agreed as to the value of his services. Another physician, who was called as a witness for the company, having testified that he, too, had attended a number of victims of the wreck, the Supreme Court holds that there was no error in excluding evidence of what he received for his services. It says that he was permitted to testify fully as to the reasonableness of the charges of the party suing, and evidence of what he received for the services he rendered would have opened the question as to how his services compared with those of the party suing, and would have involved the trial of an additional case.

REACHING CLIMACTERIC BEFORE RECOVERY FROM INJURIES.

At the time of the trial of the personal injury case of Keefe vs. the Norfolk Suburban Street Railway Co., the plaintiff was 39 years and 11 months old, and contended that, if she should reach her climacteric before she had fully recovered, her suffering might be prolonged as one of the results of the accident. The company, on the other hand, contended that on the evidence the possibility that she would reach her climacteric before her full recovery from the accident was so remote that it should not be considered by the jury as an element of damage, and at the close of the evidence asked the court so to rule, which it declined to do, submitting this question to the jury. The Supreme Judicial Court of Massachusetts overrules an exception to this, holding that the whole question was one of fact for the jury, as, in view of all the evidence, it could not be said as a matter of the law that the likelihood referred to was so remote as to call for the instruction requested by the company.

TRIAL TOO SOON AFTER SURGICAL OPERATION.

The Supreme Court of New Jersey says that, in the personal injury case of Searles vs. the Elizabeth, Plainfield and Central Jersey Railway Co., the company sought a new trial on the ground of excessive damages. If the disability resulting from the injuries was likely to be permanent, the damages would not be regarded as so excessive as to warrant an interference with the verdict, which awarded to the wife \$12,000 damages, and to the husband \$3,000, for injuries to the former, who sustained severe bruises of the head, limbs and spinal column. But it appearing that the trial was brought on so soon after a surgical operation on the patient, namely, a couple of days over a month after the removal by an incision of the coccyx, that sufficient time had not elapsed to enable the physicians to determine as to whether the operation would result in her complete or partial recovery—a result which they regarded, however, as highly probable—and it thereby appearing that justice had been done by the verdict, it was held that, in the exercise of its sound discretion, it became the duty of the reviewing court to set aside the verdict and grant a new trial.

NOT TRAVELING PHYSICIANS UNDER STATUTE.

The Court of Criminal Appeals of Texas reverses in Adams vs. State a conviction of the former of pursuing the occupation of a medical specialist traveling from place to place, without having paid the occupation tax prescribed by article 5049 of Sayles' Revised Civil Statutes of 1897. It says that the undisputed facts showed that he came to G. about May 1, 1903, and established and equipped an office; that he maintained an office at E., and at J. and B.; that he divided his time between these offices, and kept an assistant at each place, and treated patients at the places at stated intervals; that prior to coming to G. he had his headquarters and lived at M., and had practiced there and at J., and had lived at M. eighteen months; that on leaving M. he moved his wife and children to G., where they lived at a hotel up to within three weeks of the time of filing the information, when his wife and children went on a visit to relatives at Q. He received his mail at G., which was his headquarters, and practiced nowhere except at his offices before mentioned. In the court's opinion these facts did not constitute him a traveling physician as contemplated by said article 5049.

DYING DECLARATION NOT ALTERED BY CALL FOR RELIEF.

In *Hawkins vs. State*, where the Court of Appeals of Maryland affirms a conviction of manslaughter by an abortion, an exception was taken to the admission of certain declarations on account of the testimony of a physician that when he was called in the declarant said: "Oh, doctor, I am dying. I want you to relieve me." It was argued that this was rather a cry for help than the utterance of an abandonment of hope. Again, it was said that she continued to repeat she was dying, and that he must help her—must relieve her in some way. But the court says that to assume, in the face of all testimony in the case, that her cry for relief disproved the sincerity of her statement that she knew she was dying, would be to deny to her the privilege of asking the alleviation of what the doctor said he knew as soon as he saw her was intense agony. Nor, the court continues, was it a natural or reasonable conclusion that the doctor did not think death impending because he gave her a hypodermic injection, and told her she would be relieved in a little while. This injection was plainly given to relieve the agony, and it is common knowledge that such treatment does mercifully render suffering or dying persons insensible to pain. The relief the doctor promised was what she asked—a respite from agony, not an escape from death. And it must not be forgotten that it is not material the physician may think the patient may or will recover if the latter fully believes death is actually impending. The court says further that it can not adopt the view of the Kentucky court in *Matherly vs. Commonwealth*, 19 S. W. Rep. 977, that the desire to have a physician sent for clearly indicates in any case that the deceased had hope of living, though he said he was going to die. This inference must be controlled by all the circumstances of the case.

LAW DOES NOT REQUIRE THAT VACCINATION SHALL TAKE IN NEW YORK.

Attorney General Cunneen holds that the law requiring public school children to be vaccinated has been obeyed when a child has been inoculated with vaccine virus, even though there is no outward sign by swelling or soreness that the virus has had the desired result, and though a number of attempts upon the same individual do not take.



Medico-Legal Bulletin.



ORIGINAL ARTICLES

PROFESSIONAL DISCRETION—THE MEDICAL SECRET.

Under this head we print an article of superior worth appearing in a recent issue of the Medical News. Prince A. Morrow, M. D., of New York, is the author, and to add that the treatise is a classical one might be considered surplusage:

It is hardly necessary to impress upon the physician the obligation of secrecy in relation to any information of a patient's condition confided to him in the exercise of his profession. This obligation, which was formulated in the precepts of the Hippocratic oath, has been accepted as the truest and finest expression of the physician's duty to his patients and has been approved by the wisest and best of medical men in all ages. The observance of this code of duty is the primal professional virtue; and is universally recognized as the basis of all relations between the physician and patient.

No matter what theories or dogmas have divided medical men in opinion or created separate sects or systems of practice, the medical profession, with a remarkable unanimity, has remained faithful to this code of duty. Even the least scrupulous of medical men who fail wofully in their ethical duty to their confreres recognize the binding character of this obligation to their patients. Physicians may violate every principle of right and decency toward a fellow practitioner—may disparage and belittle his reputation and injure his practice—all this may be excused or condoned on the ground of professional rivalry, but the medical secret is regarded as sacred and inviolable.

In relation to venereal diseases, from their essentially private nature and, especially, their "shameful character" in popular estimation, the obligation of secrecy takes on a more vigorous and peremptory application. They are the diseases of all others which the patient would not wish revealed, and it is evident that a knowledge of their existence would not be confided to the

discretion of the physician if there was any risk of it being divulged. It is only by virtue of this tacit, though well understood contract that the confidential relations between physician and patient are established and maintained.

To the force of traditional custom the law has also added its weight of authority by making the violation of the professional secret a penal offense. But the law evidently considers the common interests of the social order superior to the interests of the individual, since it has made it obligatory upon physicians to report all cases of contagious diseases which are regarded as dangerous to the public health. This compulsory notification is justified since it is the basis of all prophylactic measures for the protection of the public against these diseases. Doubtless the intent of the notification laws is to include within their scope all diseases which are recognized as contagious and dangerous to the public health. Venereal diseases fulfil both of these conditions, but they are exempted from declaration chiefly because of their difficult and baffling character as a sanitary problem. The French law even compels the violation of the medical secret in decreeing that "the physician who knowingly leaves a nurse in ignorance of the dangers to which she exposes herself in nursing an infant suffering from congenital syphilis may be declared responsible for the prejudice caused by his reticence." It is obvious, however, that the physician cannot disclose the nature of the disease with which the child is affected without revealing the secret that one or both parents are syphilitic.

In Norway and Denmark the declaration of venereal diseases is made obligatory by the law, and while the information is kept secret by the sanitary authorities, it has proven to be one of the best measures for the prophylaxis of venereal diseases, as it has enabled the authorities to locate dangerous sources of contagion and subject them to surveillance and treatment. Doubtless it is only a question of time when the registration of venereal diseases by our sanitary bureaus will be generally adopted.

In the ordinary treatment of venereal diseases the physician finds it easy enough to adjust his line of conduct in strict accordance with his code of professional duty, as in such cases the individual interests of the patient alone are involved, but when a venereal patient consults a physician in regard to his marriage, the situation is changed, the interests of others may be jeopardized. His protective duty extends to the wife and future children, and through them to society at large.

It often happens that the special obligation imposed upon the physician to protect the interests of his patient is opposed

to and irreconcilable with this larger social duty to preserve others from infection. There thus arise many situations in which the question of professional discretion obtrudes itself and therein the physician perceives a divided duty.

In many cases when the patient applies to the physician for advice in regard to the propriety or safety of his marriage, he does so with the honest intention of accepting and abiding by the physician's decision. The chief role of the physician is to explain the significance of the disease, the dangers it might entail in married life, the necessity of treatment and the period necessary to wait before his marriage could be sanctioned as safe. However onerous these conditions may be and however prolonged the prematrimonial probation, the patient yields a more or less ready assent.

There is another class of cases, unfortunately not rare, in which the man fully instructed as to the danger he would carry with him into married life, will not forego a contemplated marriage, despite all representations the physician may make as to the danger of infecting the wife. He will plead an engagement from which he cannot honorably retreat, arrangements completed for the marriage, pecuniary or other selfish interests that would have to be sacrificed—pretexts as numerous and varied as are the motives that influence men to matrimony. He resolutely refuses to forego the marriage. To the physician's advice to wait until he is cured when he can enter the marriage safely and honorably, he will perhaps urge that delay would mean the defeat of his matrimonial projects. The physician's appeal to his honor, the denunciation of his act as base and criminal, do not shake his determination. It is precisely in situations such as these, in dealing with this type of conscienceless criminal—for it is a moral if not a legal crime for a man to risk giving syphilis to a woman who accepts him as her husband—that the professional secret introduces a complicating element which renders the physician's line of conduct extremely difficult in view of the opposing interests involved.

On the one hand there is the duty to protect the confidence of the patient who has consulted him, relying upon the traditional assurance that this confidence is sacred and inviolable; on the other, an innocent woman, it may be the cherished idol of her parents, who is to be the victim of the most odious injury, the supreme that a virtuous woman can receive, to say nothing of the injury to her health and the destruction of her offspring.

The Hippocratic oath enjoins, "My tongue shall be silent as to the secrets which are confided to me, and I will not use my

profession to corrupt manners or aid crime."

Here is a crime contemplated but not yet consummated, without malice, it is true, but none the less wilful, and from the basest and most sordid motives. The prospective victim is most often a pure young woman, confiding in the love and honor of the man who is about to do her this unspeakable wrong.

By the accident of his professional relation to this man the physician happens to be the only one who can prevent the consummation of the crime, as he is the only confidant. Does not his silence and inaction make of him an accomplice, a particeps criminis? The remorseful self-accusation of Paul was that, "I was also standing by and consenting to His death and held the raiment of them that slew Him." Is this not paralleled by the attitude of the physician who stands by and guards the dissolute secret of the assassin? A single word to the family physician or natural protector of this woman would save her from this terrible fate, yet the physician is fettered hand and foot by this cast iron code, his tongue is silenced, he cannot lift a finger or utter a word to prevent this catastrophe. His code shields the criminal more effectively than the most solemn personal pledge. The very name and nature of the disease gives an added significance to the physician's obligation not to reveal it.

If it were a taint of insanity, of cancer, of leprosy, even, it might be hinted at or indirectly revealed, but syphilis never.

Another aspect of the situation may be considered which has been literally duplicated in practice. The intended victim is also a patient of the physician. He has brought her into the world, her family have been lifelong friends and patients—but this does not alter the situation. The professional code marks out and strictly limits his line of conduct. Ethically he has no more right to intervene than if she were a complete stranger. He cannot apply the knowledge of a person he has gained in his capacity as a physician to protect one who may be as dear to him as a member of his own family.

There are no circumstances in the entire range of a professional man's experience so painful as to recognize himself powerless to prevent the morally culpable union of a syphilitic man and an innocent woman. There is no situation in which the arbitrary restrictions of a code of conduct based upon professional secrecy seem so opposed to the voice of conscience and the dictates of humanity as the one under consideration. To protect the man, he feels to be odious, immoral and culpable; to protect the woman would be manly, humane and just. The inspiration of his conscience cries out against the former duty;

every noble instinct in his nature would be enlisted in the latter duty.

What has been termed the "eternal problem" of the professional secret has long engaged the thoughtful attention of medical men. Like all questions connected with the prophylaxis of venereal diseases, it is exceedingly complex and baffling. It may be said that no solution of these problems has ever been proposed, no plan of action for the regulation or control of these diseases has ever been formulated which does not come in contact with individual liberty, legal rights or moral principles. There is always an irreconcilable conflict between the sanitary and other interests involved.

Now it will be admitted that it is a strictly sanitary duty to guard against the introduction of venereal diseases in marriage, because they compromise the health of the wife, the existence of the children she might bring into the world, and through them the interests of society. But it would appear that the higher duty of the sanitarian to preserve others from infection falls below his duty as physician to protect a wretch in infecting them. Not only the interests of the many are sacrificed to the interests of the individual, but the innocent are made to suffer in order to advantage the guilty. The law which backs up and supports the sanitarian in his efforts to control and limit the spread of contagious diseases in general here intervenes in favor of the spreader of disease. It sets its seal of silence upon the secret of the individual which cannot be broken—under penalty of the law.

It would simplify the situation if the physician could accept and act upon Dogberry's charge to the watch in "comprehending vagrom men:"

"You are to bid the man stand in the prince's name."

"But if he will not stand?"

"Then let him go his way and thank God that you are rid of a knave."

But does not the advice of a distinguished authority have the same exquisite Dogberrian flavor? "Tell him plainly the truth, show him that he will commit a crime in marrying, and if it is seen that he will not be convinced, dismiss him brusquely, as you would dismiss an assassin."

Practically, however, it is to the inane role that the physician is reduced through the alienation of his liberty of action by his professional code.

In this connection it will be interesting to compare the views of different writers upon this aspect of medical deontology.

Langlebert gives the following case: "The father of a young woman asks information relative to the health of a young man (your patient) who is engaged to his daughter. 'I wish to ask under the seal of secrecy certain details as to his malady. I beg you to say whether I can or cannot accept him as a son-in-law. I hope that you will take into consideration the embarrassment of a father placed between the desire to give his daughter the husband of her choice and the fear of the results the marriage may have if the hints that have been given me are unfortunately true.'"

"In the case given above," says Langlebert, "should the physician, entrenching himself behind the Hippocratic oath and the proscriptions of the law, guard an absolute silence, or only interrogating his conscience, should he make it the judge of the secret confided to him, to divulge it, or be silent, according to circumstances?"

Commenting upon this case, Dr. Gaide says: "If a client affected with constitutional syphilis, which resists all treatment, does not fear to solicit the hand of a pure young woman, who is the joy of her family—if the father of this young woman comes to demand of me in confidence, if he can in all security give her to this man who would soil her by his first contact and leave her as her only consolation children affected by this malady, shall we respond with a silence which may be misunderstood and thus render ourselves accomplices of a marriage the fruits of which will be so deplorable? Never would I have the courage to obey the law under such circumstances. My conscience would speak higher than it, and without hesitation I should say, 'No, do not give your daughter to this man,' and I would not add another word."

Langlebert indicates the physician's role as follows: "I regret that I cannot give the information you ask. The best you can do, if you intend to carry out this project of marriage, is to inform the young man of the warnings you have received or have him come with you or send me a writing by which he authorizes me without restriction to say whether he can or cannot espouse your daughter.

"The physician ought to interdict all kinds of information as to the health of a patient on the occasion of marriage, as a professional principle, an invariable rule of conduct, he should take refuge behind the proscriptions of the law.

"The alternative is cruel, it requires a certain courage in such cases for the physician to remain master of himself and faithful to his duty.

"If it be a misfortune to society it would be a much greater damage to permit the enfeeblement of the tutelary principle of the medical secret which is one of the necessities even of the social order."

Juhel Renoy maintained that it was not only lawful but even compulsory for any doctor who was a man of honor and courage to oppose and even denounce any criminal projects his patients might entertain in regard to marriage. He cites two instances in which he had undertaken the cause of young girls who were about to fall into a trap of this kind and as his patients were without conscience, and had refused to listen to the moral reason he adduced, he had declared that he did not feel bound to secrecy toward them any longer and that he would either go or send to the parents of the young woman and warn them. Under this threat one of these marriages was broken off, but a more direct interference was required in the other case. He sent for the girl's father by one of his confreres and replied without hesitation to the question put to him, "No, sir; do not marry your daughter to Mr. X," with so much emphasis that the marriage was broken off.

Jullien, commenting upon his confrere's action, says: "If the result was fortunate the method employed was detestable." "It was treason, perpetrated with the 'best intentions,' but still a treason, for it is all very well to say the patients were warned but it was not until they were no longer masters of their secret, which no doubt would not have been revealed if they had known what use was going to be made of it; strict duty would have required that before receiving this confidence our confrere should have warned the parties interested that he would publish the information if he saw fit."

Jullien reports with evident approval how an old practitioner, Dr. Pioget, solved this troublesome problem.

"A young girl whom the doctor had brought into the world, of whose family he was a personal friend, and who was beautiful and charming, was about to be married. The doctor knew the intended bridegroom. He had attended him and attends him still for a terrible, incurable, contagious, hereditary disease. For a man so afflicted to marry was not only a bad action, but a crime—a really moral and physical murder. The doctor went to the young man. He showed him the infamy of his conduct. But he had to do with a 'struggler for life,' who replied coolly that he cared little or nothing for the girl, but she was rich and would save him from ruin, and all that he could promise was to content himself with her money only. What was to be

done? The rule of the profession was strict. Even in such a case the physician could not break it. The scoundrel knew that and told the doctor so. 'Very good,' replied the doctor, 'but since you are unwilling to leave your prey I will snatch it from you. If you do not break off this marriage tomorrow, I will strike you in the face at the opera.' The courage of the honest man overcame the coward and the marriage was broken off. While this action on the part of the doctor was unquestionably chivalric, it is too Gallic and melo-dramatic to be imitated in our Western hemisphere."

Thibierge, who proves himself in his recent work ("Syphilis and Medical Deontology") a staunch upholder of the absolutism of le secret medical, admits "that this obligation weighs heavily upon the physician who in submitting to it is placed in the impossibility of preventing syphilitic contaminations, often multiple, in not being able to prevent the syphilitic from marrying. The medical man feels the obligation to guard the secret troubling his conscience and he regards himself as almost an accomplice in an action which he justly esteems criminal, since the syphilitic will not fail to contaminate his wife; in such circumstances the law appears to him odious, and seems to have been made mainly for the purpose of protecting particular interests, and among them the least respectable of all—the general interests seems to be sacrificed. The physician in his revolt against the law, may be tempted to yield his obligation to the cry of conscience, forgetting that in the language of a distinguished magistrate, 'No one is sufficiently sure of his conscience to put it above the law.' Nevertheless, Thibierge contends that while the more obvious intent of the law may seem to be for the protection of the individual, yet in reality its ultimate result is in the interest of society, since the enforcement of the obligation of the medical secret constitutes the indispensable condition as well as the most efficacious means for the public prophylaxis of syphilis. He reasons as follows:

"If the medical secret ceased to be imposed and the syphilitic could not count upon the silence of the physician, he would take care not to address himself to the conscientious physician, but betake himself to the charlatan, whose silence he could purchase; or, for greater security, he would treat himself, or not be treated at all.

"Others, honest but timorous, having the impression that a syphilitic man can never marry—might mistake venereal accident, easily cured, for syphilis, and consequently remain celibates.

"Others again suffering from a benign syphilis, held back by the fear of confiding in a physician, would not be treated at the beginning of their disease and seeing all manifestations disappear completely, would imagine themselves cured and marry and infect their wives. Finally, old syphilitics who had had the disease many years previously, not knowing that it was safe for them to marry, would remain single.

"The disadvantages resulting from this relaxation of the medical secret would be, both for individuals and society, much more numerous and frequent and altogether quite as grave as those which it is designed to prevent."

It will be admitted that there is much truth in this line of argument. The venereal patient, and especially the syphilitic, is a timorous creature. He is keenly alert to any circumstance that might suggest a suspicion to his disease. He scents danger of exposure where none exists. He often neglects to give his name or address to the specialist he consults. He looks askance at any prescription, fearing that it may give a clue to the nature of his disease, and he will go to an out of the way pharmacy to have it filled. The slightest intimation that his secret would not be held sacred by the physician under any and all circumstances would drive him away.

Under such conditions the valuable protective service which physicians are able to render society by enlightening venereal patients as to the dangers of their disease by persuading them from their prospective marriages until time and treatment render such a step safe, would be sacrificed.

When we come down to the question of practical results, even assuming that the question of the professional secret were entirely abrogated, and that the sanitary duty of the physician in excluding venereal diseases from the marriage relation was as plain as that of the health board in excluding trachoma and other contagious diseases from the public schools, what could be accomplished?

In the first place, in the larger proportion of cases venereal diseases are introduced into marriage from extraconjugal infections, contracted post nuptias. Here it is plain that the preventive duty of the physician could not be exercised.

In the next place, the specialist consulted often knows nothing of the parties concerned, neither the man nor the address of the intended victim, or of her natural protector or the family physician—all may live in a distant city. He could not utter a word of warning, even if such interference were justifiable.

Finally, few patients when enlightened as to the serious and dangerous consequences of a premature marriage, brazenly avow their intention to the physician of carrying out their criminal intent, despite his warnings. One "will see about putting it off," another "will consider the matter," another will remain silent, and while the physician may be morally sure that the man is secretly but none the less resolutely determined to carry out his purpose, he cannot take any step to guard against an act on the part of the patient the intention of which may be distinctly disavowed.

After weighing all the arguments pro and con, after studying dispassionately the practical results which would follow an innovation upon the established principles which guide professional conduct in relation to the patient's confidence, we are forced to the conclusion that the solution of this problem must be found in some other way, in any other way than in removing the old landmarks. We may justify ourselves in ignoring particular cases in which both conscience and humanity cry out against our silence and inaction by the consideration that in taking a broader and more general view, the larger interests of society, the greatest good of the greatest number, will be best promoted by remaining faithful to the traditions of the new code. But the physician will fail in his duty if, in his endeavor to prevent the premature marriage of a venereal patient, he does not use every argument, appeal to every motive, play upon every chord of sensibility, and, if necessary, denounce the cowardice and criminality of an action which exposes the innocent to infection with all its train of physical woes.

(CONCLUDED IN JULY.)



State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

RESUME OF LAWS REGULATING THE PRACTICE OF MEDICINE IN THE UNITED STATES AND TERRITORIES.

The following resume of laws governing the practice of medicine in the various states, territories and possessions of the United States has been gathered from all available sources. We believe it to be correct. Should any inaccuracies appear we hope that our readers will call our attention to the same:

Alabama.—Examination required. Diploma if examined by a county board. Fee, \$10.

Alaska.—No laws. Allowed to practice on diploma.

Arizona.—Diploma, examination and residence required. Fee, \$10.

Arkansas.—Examination required. Diploma not essential. Fee, \$10.

California.—Diploma and examination required. Fee, \$20. As follows: The medical law and the rules of this board require an applicant to possess a diploma issued to him by a legally chartered medical college, the requirements of which are in no particular less than those prescribed by the Association of American Colleges for that year. The applicant must produce to the board such a diploma, and an affidavit stating that he is the lawful possessor of said diploma; that he is the person therein named; and that the diploma was procured in the regular course, either of instruction, or examination, without fraud or misrepresentation of any kind. Such affidavit must be taken before any person authorized to administer oaths (blanks will be furnished by the secretary of the board.) The applicant must furnish satisfactory testimonials of good moral character. In addition to the above, every applicant must be personally examined on the following

subjects: Anatomy, physiology, bacteriology, pathology, chemistry and toxicology, surgery, obstetrics, materia medica and therapeutics, theory and practice of medicine. There will be not less than ten (10) questions on each subject. The examination must be in whole or in part in writing, and in the English language. A general average of 75 per cent. must be attained. The fee is \$20, and should accompany the application. If an applicant fail in his first examination he may, after not less than six months, be re-examined. If he fail in a second examination in less than one year after date of second examination, and shall be required to pay for such examinations the full fee. No special permits are authorized by law. The regular meetings of the board will be held on the first Tuesday of April, August and December of each year.

The California board may, in its discretion, accept and register, upon payment of the registration fee, and without examination of the applicant, any certificate which shall have been issued to him by the Medical Examining Board of the District of Columbia, or of any state or territory of the United States; provided, however, that the legal requirements of such examining board shall have been, at the time of issuing such certificate, in no degree or particular less than those of California at the time when such certificates shall be presented for registration to the board; and, provided, further, that the provisions in this paragraph contained shall be held to apply only to such of said medical examining boards as accept and register the certificates granted by this board without examination by them of the ones holding such certificates. Fee, \$20.

Colorado.—Diplomas and residence required. Examination not obligatory. Registration fee for graduates, \$5. Examination fee, when required, \$10.

Connecticut.—Diploma and examination required. Fee, \$15.

Delaware.—Diploma and examination required. Fee, \$10. Good for re-examination from six months to two years. Fee returned to unsuccessful applicant. Reciprocates, that is, licensees from Maryland and New Jersey recognized upon payment of \$50, without further examination.

District of Columbia.—Diploma and examinations required. Fee, \$10.

Florida.—Diploma and examination required. Fee, \$10.

Georgia.—Diploma and examination required. Fee, \$10. Good for re-examination.

Hawaii.—Diploma and examinations required. Fee, \$10.

Idaho.—Diploma and examination required. Fee, \$25. Good for one re-examination within one year. Applicant must be a citizen of the United States or declare intention to become one.

Indian Territory.—Diploma and examination required.

Illinois.—Diploma and examination required. Fee, \$10 for examination; \$5 for certificate when issued. Reciprocates with Maine, Michigan and Indiana. The board is in power to license graduates of Illinois Medical colleges without examination.

Indiana.—Diploma and examination required. Fee, \$25. Good for one re-examination within twelve months.

Iowa.—Diploma and examination required. Fee, \$10. Good for one re-examination.

Kansas.—Diploma not essential. Discretionary with board. Examination fee, \$15. Candidate must show that he has devoted four years of not less than six months each to the study of medicine.

Kentucky.—No examination required. Grants license upon diploma. Fee, \$2. Recording, 50 cents. Residents only are licensed.

Louisiana.—Diploma and examination required. Fee, \$10. Registration, \$1. Half of fee returnable to unsuccessful candidates.

Maine.—Diploma and examination required. Fee, \$10. Reciprocity with Michigan, New Jersey and Illinois.

Maryland.—Diploma and examination required. Fee, \$20. Reciprocates with District of Columbia. (Junior students may take examination in anatomy, physiology, chemistry and materia medica upon payment of full fee. Successful candidates are exempt from these subjects in finals.)

Massachusetts.—Diploma not essential. Must show evidence of college attendance. Examination fee, \$20. Good for one re-examination within one year.

Michigan.—Diploma and examination required. Fee, \$25. Graduates of Michigan pay only \$10. Reciprocates on basis of diploma and examination with Illinois, Ohio, New Jersey and Maine. Reciprocates on basis of diploma only with Kentucky, Indiana and Maryland.

Minnesota.—Diploma and examination required. Fee, \$10.

Mississippi.—Diploma not required. Examination fee, \$10. Registration, 25 cents.

(CONCLUDED IN JULY.)



Medico-Legal Bulletin.



PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. 2

JUNE 1904

No. 9

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

\$1.00 Per Annum

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Single Copies 15c

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A "SURPRISER."

From an exchange we clip the following: "In Chicago I actually found a corporation or company formed for the purpose of maintaining personal injury cases. They had their regular counsel, they advanced costs and fees, and the cases were, of course, taken upon a basis purely contingent besides."

Rather startling at first blush; and yet nothing but the natural outgrowth of what has long been an individual practice amongst a certain class of the legal fraternity.

Would such a company dare to risk the contingency fee in a case instituted against a contract holder of the Physicians Defense Company? They might if this defense company was one buying and selling the earth and indemnifying everything on it. However, such is not the case. The Physicians Defense Company is a specialist in a particular line. All its energies are put to the defense of the medical practitioner, and its energies stay put.

If one of your patients was attacked with a serious ailment, would you advise him to consult a specialist in that particular disease, or one who practices that branch as a side issue?

Possibly it would be as wise for the doctor to hire a good lawyer when he wants to express himself perfectly in legal matters as for the lawyer to hire a good doctor to carry him through a serious attack of illness.

CAUTION AS TO ACCIDENT POLICIES.

Physicians, engaged in an extra-hazardous avocation, liable to injury at a time and in a manner hard to prove, cannot be too careful in their selection of accident companies to carry their insurance; companies which evade payment on the ground—for example—of “failure to give immediate notice of accident” had best be shunned. The Maryland Casualty Co. has recently secured immunity from payment of one of its risks, under these circumstances: The decision handed down on June 19, 1903, by the Supreme Judicial Court of Massachusetts, was in the case of *Rooney vs. Maryland Casualty Co.*, 67 N. E., 882. It appears that Rooney held an employers’ liability policy, issued by the Maryland Casualty Co., which stipulated that “the insured upon the occurrence of an accident shall give immediate notice thereof in writing, with full particulars, to the home office of the company at Baltimore, Md., or to its authorized agents. He shall give like notice, with full particulars, of any claim which may be made on account of such accident.” I quote from the opinion of Judge Barker: “The accident on account of which the suit is brought happened on November 5, and the plaintiff knew of it on November 6, but the first written notice of it which he sent to any person was his letter of November 28. The only act which he did tending to give notice before that date was to go to the office of Houston, the person from whom he had received the policy and to whom he had paid the premium, and to tell him that there had been an accident upon the work and to notify a physician. We think that there was no evidence admitted or offered which, in view of this state of facts, would have justified a finding that the plaintiff had complied with the stipulation that upon the occurrence of an accident he should give immediate notice thereof in writing. His omission to give any written notice whatever for more than three weeks after he had information of the accident distinguishes the case from that of *Mandel vs. Fidelity and Casualty Co.*, 170 Mass., 179, 49 N. E., 110, 64 Am. St. Rep., 291, where the insured gave notice four days after it had occurred.” The insured, Patrick H. Rooney, contended also that the Maryland Casualty Co. had waived its right to refuse to assume this accident under the facts as set forth in Judge Barker’s opinion, viz: “The substantial circumstances bearing upon the question of waiver, as shown in the evidence and offer of proof, are that, after a complete failure to give immediate notice in writing, the plaintiff, on the twenty-third day after the accident, and the twenty-second day after he had knowledge of

it, sent a written notice of it to the Boston attorneys of the defendant. The latter received this notice from its attorneys on December 11, and on the next day instructed them to disclaim liability, which was done on December 15 or 16. In the meantime, between November 29 and December 7, the attorneys had been investigating the circumstances of the accident, and unsuccessfully endeavoring to settle for a small sum with the person injured, and had requested the plaintiff to make to themselves, and had received from him, a written report of the accident. In all this we can discover no intention on the part of defendant to waive the breach of the condition for immediate written notice of the accident, and no evidence of any loss or injury to which the plaintiff was exposed or subjected by the course pursued by or on behalf of the defendant. We think the verdict for defendant was right." Nevertheless—if the man was hurt, and could prove it, and had paid for his insurance—the company wronged him in declining to pay, regardless of the "reservations" of its policy; and the court is one of law and not of justice in supporting its attempt to evade payment. Doctors will do well to inspect their accident policies carefully.—American Journal of Surgery and Gynecology

JUDGMENT AGAINST FAITH CURIST CONFIRMED.

We are informed by the New York Medical Journal that Judge Haight, of the Court of Appeals, has sustained the judgment of the lower court in finding guilty a "healer" who allowed his little daughter to die of broncho-pneumonia without medical aid. Let the good work go on. A few stiff judgments may bring these fellows to a sense of their responsibility. To reason with one who is a faith curist for revenue only is to "cast pearls before swine." Many faith curists are honest, no doubt, but they must be brought to know that the strong arm of the law will protect the children at least from suffering at their hands. Let the faith curist believe, if he wishes, that sickness and sin are synonymous, but let him know then that certain sins are in the eyes of the law contagious and certain others curable by proper material treatment and that whether he believes the law right or not he must obey it or suffer the consequences.—Ft. Wayne Med. Jour. Mag.

Judicial Decisions.



Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

CONFINING PATIENT IN UNSANITARY PEST HOUSE.

The Court of Appeals of Kentucky says that it was alleged in the case of *Having vs. the City of Covington* by the party suing for damages that he was taken against his will when sick with smallpox and confined in a pest house, which was unfit for any one, well or sick, to remain in; that the roof was broken, and the sides of the house open, so that the rain, snow, and ice could come in and on him; that he was placed in a filthy, unhealthy, and damp room, and compelled to remain there; that the bed, bedding, and covering and place where he slept were unfit for any one to occupy; that, because of the cold, sleet and snow, and other elements, and the filthy condition of the rooms and bed-clothing, he suffered both mental and physical pain and anguish, and that the ravages of the disease with which he was afflicted were increased by reason thereof. The court says that it was agreed that the officials who committed the wrongs complained of were personally liable for the injuries received, and the only question to be determined was, could the city be made liable therefor? One of the general principles underlying the administration of government of municipal corporations is that, in the preservation of the peace, public health, maintenance of good order, and the enforcement of the laws for the safety of the public, they possess governmental functions, and represent the state, and under that principle a city is not liable for the malfeasance, misfeasance, or nonfeasance of its officers. With reference to the matters alleged, the city, by its officials, was acting for the preservation of the public health, and in a governmental capacity, and as an arm of the state government. All the authorities support this conclusion, and there is no deviation from these principles, except where the city is made liable by an express statute. There being no statute making the city liable in this case, a judgment, on demurrer, in its favor is affirmed.

LIABILITY FROM REFILLING BOTTLE WITHOUT NEW LABEL.

The Court of Appeals at St. Louis, Mo., affirms, in the case of Peterson vs. Westman, a judgment for \$500 damages against a druggist for injuries sustained by the party suing in applying to a bruised finger carbolic acid, thinking it arnica. He had sent his son, 12 years old, to the drug store to get some arnica in a bottle which had a carbolic acid label on it. The boy testified that he asked for arnica. The druggist testified that the boy asked for carbolic acid, and he repeated after him, "Carbolic acid?" and the boy said, "Yes, sir." He also testified that the bottle had a fresh carbolic acid label on it. Other witnesses testified that the label was scratched and partly washed off when the bottle was sent for the arnica. The court says that the same label was on the bottle when it was returned as when sent to the druggist to be filled with arnica. The party suing saw the label on the bottle, and knew what it was, when he sent his son with it to the druggist for arnica. If he noticed the label when the bottle was brought back, he saw that no new label had been placed on it; that the bottle was in the same condition as when sent, except that it had been filled with what he supposed to be arnica. In these circumstances, the court does not think the label apprised him of the fact that the bottle contained carbolic acid. Had the druggist attached a new and fresh label, advertising the contents of the bottle as carbolic acid, and the party suing, without noticing the label, had used the acid or used it in disregard of the warning the label would have conveyed, his injury might be attributable, the court says, to his own negligence; but the label, under the facts of the case, did not advise the party suing of the contents of the bottle, and negligence could not be attributed to him for disregarding it. The court thinks it strange that a medical student who had recommended the use of arnica did not discover the mistake when he picked up the bottle and looked at it after it had been returned filled with carbolic acid, but it does not think that his negligence, if he was negligent, in failing to make the discovery, was an intervening negligence that precluded a recovery by the party suing, he being in no sense of the word the agent of such party, the latter not having employed him or even solicited his advice.

PREGNANCY IN RAPE CASE AND IMPROBABILITY OF CONCEPTION.

The Supreme Court of Iowa says, in the case of *State vs. Carpenter*, a prosecution for rape, that the pregnancy of the prosecutrix has not heretofore been considered ground for a continuance. Her condition might, of course, appeal to a jury, and tend to enlist their sympathies; but the presence in the court room of a child born as the result, or as the claimed result, of a rape, would be quite as potent in this respect. Consequently, there was no error in overruling the motion for a continuance in this case. Indeed, the condition of the woman might well have been good ground for proceeding with the trial at that particular time. The dangers incident to childbirth may well be taken into account when such applications as this are made. A point was sought to be made as to the improbability of the witness conceiving at the time she claimed she was ravished. This was based on the theory that her last menstrual period had so far passed that conception was improbable, and on the further thought that conception at such a time was the more improbable on the state's theory of ravishment. But the court declares that it can not say, as a matter of law, that conception could not occur under such circumstances. This whole matter was for the jury.

SUPPORT REQUIRED FOR ASSERTION OF HYPNOTISM.

In the trial of the case of *Austin vs. Barker*, the daughter of the party suing testified, and it was asserted before the Fourth Appellate Division of the Supreme Court of New York, that the party sued, her alleged seducer, hypnotized her, and so made her unconscious of his unlawful acts with her at the time they were occurring, and that this condition of unconsciousness thereof continued until her father's attorney visited her nearly a year afterward, and again placed her in a hypnotic condition, through and by means of which her consciousness was so restored that it seized hold of events of which she had theretofore been unconscious. The court says that it does not feel called on to discuss or determine the rather shadowy boundaries of hypnotism, or its possibilities at legal trials in explaining what otherwise might fairly be considered as incredible. In this case, the witness did not for a period lose recollection of things theretofore lodged in her mind, with subsequently recurring memory,

but through an alleged peculiar mental condition she became conscious of events of which she had never before been at all conscious. The court was, therefore, thrown back on the explanation and theory of hypnotism of the party suing, and it sufficed to apply to it the ordinary rules of evidence and common sense. That explanation was opposed to ordinary experience and knowledge. If, as explanatory thereof, he relied on some science and theory not generally known or understood, it was proper for him to give the jury the light of some competent evidence tending to sustain the probabilities, or at least possibilities, of what was asserted. Nothing of this kind was done on the trial, unless there may have been read then, as on this appeal, the unverified statements and opinions of certain authors. The court is unwilling to accept them, or the otherwise unconfirmed statements of the witness, that at certain times in 1900 she was placed in an hypnotic condition whereby she was made unconscious of certain events, and again in a similar condition in 1901 whereby she was made conscious of them.

VENEREAL DISEASE AND MARRIAGE—WAIVING PRIVILEGE.

The Court of Appeals of New York says, in the case of *Svenson vs. Svenson*, that it shares in the unwillingness of the Appellate Division of the Supreme Court to assert the doctrine that an innocent and unsuspecting girl who marries a man afflicted with a chronic, contagious, and hereditary venereal disease, and who, therefore, refuses to consummate the marriage, may not procure a decree annulling the same because of the fraud involved in the existence of such a condition and its concealment from her. But, the court continues, the relief sought was denied on the ground that the defendant, two years after the marriage, had practically recovered. What a practical recovery from such a disease may import, where it has existed for more than two years, with the danger of its return and ultimate transmission, it is difficult, if not impossible, to determine. But it was certain, at least, that at the time of the marriage the defendant was incapable of meeting the obligations and performing the functions of the marital relation, and was morally and physically unfit to become or continue to be the husband of a pure and innocent girl. When he concealed that condition from her, and still induced her to marry him in ignorance thereof, he was guilty of a base and unmitigated fraud as to a matter essential to the relation into

which they contracted to enter. Obviously, the principle that refuses relief in cases of ordinary ill health, after the marriage contract has been actually consummated, has no application to a case like this, where there has been no consummation, and the disease is one involving disgrace in its contraction and presence, contagion in marital association, and includes danger of transmission and heredity that even science can not fathom or certainly define. The suppression of a disease including such dire and disastrous possibilities, directly affecting the marital relation, constitutes a fraud which clearly entitles the innocent party to a decree annulling the marriage contract, particularly when it has not been consummated. Again, the court says that it was evident that, the marriage not having been consummated, the usual considerations of public policy which apply to a case where the relation has by consummation of the marriage ripened into a public status did not exist here. There was between these parties little more than a contract to marry, and the court is aware of no principle of public policy which would be subverted by annulling this marriage, or which required it to compel the plaintiff to consummate the marriage and give herself up as a sacrifice to the possibilities involved in such a course. Nor does the court seem to think that relief could be refused the plaintiff on the ground of some supposed collusion between the parties, belief in which was presumably reached principally from the fact that the defendant appeared by an attorney, who, on the trial, waived the provisions of section 834 of the Code of Civil Procedure in the manner required by section 836 of that act (relative to privileged communications), thus enabling the plaintiff to prove by a physician the physical condition of the defendant when the marriage contract was entered into, which she could not have done in that manner except by such waiver. If there remained in the defendant a single spark of manhood, the court asks, how could he have done otherwise? Moreover, it says, the record tended to disclose that this course was pursued by the defendant to avoid being called as a witness and compelled to testify to his own ignominy and disgrace.—J. A. M. A.

HAVING CANKER NOT EVIDENCE OF HAVING CANCER.

An applicant for life insurance told the medical examiner that he had a canker sore on his tongue, and this fact appeared in the record of that examination. The Second Appellate Division of the Supreme Court of New York says, *Peck vs. Washington Life*

Ins. Co., that if there was any reason to anticipate danger from such canker it was the duty of the medical examiner to have determined that fact. Because the insured subsequently developed a cancer on his tongue, and because he subsequently died from the effects of blood poisoning growing out of an operation, did not establish that he had a cancer at the time of the examination, or that he had any reason to believe that the canker sore was in fact a cancer, and the burden of proof was on the company on this proposition.

IN LIGHTER VEIN.

THE FLAG OF OUR UNION.

She scarce had been three months a wife
When I discovered her astir,
With scissors, cloth and needles rife,
To make the banner of our life—
The diaper!

And now, while I indite these lines,
Full of poetic fire, as 'twere,
Those other lines are hung with signs
Of married bliss, among which shines—
The diaper!

On Homer's bust, beside my door,
Among my books, though I demur,
All redolent upon the floor,
I see it scattered by the score—
The diaper!

And when I drink in health and pore
On love's young dream and joys that were
The little rascal on the floor
Pours his libation, more and more—
The diaper!

Yet should I swear—I'd strike a snag—
My little wife would raise a stir,
And flaunt aloft the dangerous rag,
And call me traitor to the flag—
The diaper! —*Exchange.*



Medico-Legal Bulletin.



ORIGINAL ARTICLES

PROFESSIONAL DISCRETION—(Concluded).

While the obligation of the medical secret is in the general interest of the social order and should be maintained as a fixed principle of professional conduct, it may be admitted that a situation of a peculiarly aggravating character may present itself when the patient shows himself an exceptional sort of brute by the obstinancy with which he adheres to his criminal purposes after he is assured that he will almost certainly infect his wife—in such a case the physician, knowing all the circumstances and fully appreciating the tragic significance of such a step, must be guided by his own lights and conscience. If he should consider the criminal intent of this monster as entirely without the pale of professional protection and refuse to stifle his own feelings as a man of heart and conscience, who shall condemn him? Such a man is far more likely to prove loyal to the highest ideals of ethical duty in his relations with his patients in general, than the man who views these social catastrophes with a cold-blooded indifference, disclaiming all personal responsibility and considers that in guarding the dissolute secret of his patient he is doing his whole professional duty.

Various expedients have been suggested which would permit the exercise of the physician's protective duty, while the time-honored principles of professional conduct are still preserved intact.

M. Brouardel, whose work (*Le Secret Medical*) embodies the most elevated conception of the role of the physician in relation to professional confidence, thinks that in cases of this character a subterfuge is legitimate. Thus, "interrogated upon the health of one of his patients whom he knew to be syphilitic, he advised the father of the young woman whom he had asked in marriage to exact that his future son-in-law should take a policy of insurance upon his life, the syphilis revealing itself by acci-

dents so apparent, that the young man in question would not dare undergo the medical examination preliminary to the granting of the policy."

While the acceptance of a risk by a life insurance company may be regarded in some respects as a certificate of present good health, yet it would prove delusive as a guarantee against syphilis. In cases where the disease is recent or revealed by manifestations actually present at the time of examination, it might be detected, but in an interval between the outbreaks the patient even in the first year of his disease may present no incriminating evidence. In this country at least there is no uniformity in the principle adopted by life insurance companies in taking these risks. Some depend upon the results of the medical examination made at the time of the application, and others upon the truthfulness of the answers made by the applicant. The records of life insurance companies would be very misleading as a basis for estimating the prevalence of venereal diseases in any country. As one examiner states, "This company apparently has a very virtuous set of members who have been remarkably free from venereal lesions."

The fathers of young women are censured for being largely responsible for the evils under consideration. It is claimed that it is a father's duty to satisfy himself of the health as well as the social and pecuniary condition of his future son-in-law. He may, indeed, contrary to established usage, interrogate the young man as to his freedom from venereal disease, but the latter would be hardly frank enough to reveal the existence of such a disease if he had it. To meet this difficulty it has been proposed that the candidate for marriage should be provided with a certificate from a physician which should be equivalent to a medical sanction or prohibition of his marriage. Many French authorities speak highly of this solution of the problem.

Jullien is quite enthusiastic over such a procedure, "as the father of a family would find himself relieved from any painful uncertainty if at the beginning of an engagement he received a paper couched in terms like this:

"I declare Mr. X. to be free from all morbid conditions of the genital organs. After a careful local examination I have not discovered any trace of disease or contagious or transmissible malady.

(Signed.)

"'Frasicator.'"

"In the event of the patient being ill or still uncured of his disease, the terms might be so expressed as to make it equivalent

to a certificate of disease, in which case the interested party would not likely use it."

Without reference to the hostility of public sentiment in this country against the adoption of such a restrictive measure there are certain objections of a practical nature which suggest themselves.

While it may be possible to determine the fitness of a gonorrheic for marriage by a bacteriological examination of the urethral secretions, it is not always possible to come to an equally definite conclusion as to the aptitude of a syphilitic to transmit his malady. In many cases it is not possible to determine whether a man is a syphilitic or not in the absence of existing accidents and the history of antecedent symptoms, all information relating to which the patient would doubtless withhold. Among other abuses, offices would be opened for the sale of certificates destined only to dupe those they are ostensibly designed to protect.

Another phase of quarantine protection suggested is the requirement by the state, as a preliminary condition to the issuing of a certificate from an official board of examiners showing that the contracting parties are free from contagious or transmissible venereal disorder. Some of our western sociologists with a fatalistic belief in the efficacy of legislative enactments to correct social evils have sought to place such laws upon the statute books of Michigan and the other states. The remedy would be vain and futile of the anticipated results, its thorough enforcement would be impossible, its obvious effect would be to promote celibacy, as many self-respecting persons would rather forego marriage than be subjected to what they would regard as a humiliating condition, while others would evade the law by simply crossing the borders of another state where such a law was not in force.

After Marriage.—While it is the duty of the physician to employ any justifiable means to prevent the premature marriage of a venereal patient, yet it often happens that he is not consulted during the prematrimonial period and his advice is only asked after the marriage has been consummated and the disease introduced into the household.

There are a variety of situations which present themselves in practice. The patient may have married believing himself cured; he may have received an infection from an exposure just before marriage, the results of which are not manifest until after marriage; he may have become contaminated from an exposure post

nuptias. His wife may not yet have been exposed to contamination or she may already have been infected. It is evident that the physician's duty will be rendered more difficult and delicate in view of these more complicated situations.

In the first place his manifest duty is to limit the disease if possible to the one who has no right to complain of it and prevent its propagation to others, to establish a sanitary cordon which shall protect the woman and her offspring. He will find this task extremely difficult under conditions created by the exigencies of a life in common and which are so favorable to contagion. If the man has syphilis in an active contagious stage, it will be necessary not only to interdict all sexual intercourse, but to urge that every precaution be taken against exposure to the multiple and varied modes of external infection, such as might occur from kissing, or through accidental and unconscious contacts from sleeping in the same bed, using the same drinking or eating utensils, etc. If the wife has already become infected, it is of the utmost importance that she should have thorough and efficient treatment, not only to protect her from the individual risks of the disease, but also to secure its preventive influence upon the hereditary transmission of the disease.

The important question comes up in this connection whether the wife should be informed of the name or nature of her disease.

The fixed rule of professional conduct in these cases, from which there can be no deviation, is that no information or hint even of the nature of the disease should come from the physician. It matters not what may be the feelings of indignation or disgust he may entertain for the man, he must zealously guard the secret of the patient; the harm that has been done and cannot be undone, the main indication is to limit its ill-effects.

It is a question whether it is not better in the interest of the wife as well as of the husband that she should not know or even suspect the nature of her disease, if it can be possibly concealed from her, and thus spare her the mental anguish, the sense of injury, shame and humiliation which would come from the revelation.

From this point of view Langlebert advises that "the husband should have in the physician a faithful and intelligent ally who conspire together to conceal the nature of the disease."

The general trend of advice given by most writers is that the patient should "never own up." "Confess nothing, keep up appearances and get well." Such is the formula for his guidance. Now, it is conceded that the physician in his efforts to save a compromising situation and preserve harmony and peace of a

household, is justified in employing all the resources of his tact, all the skill of his diplomacy, and, if need be, resort to evasion and subterfuge in protecting the patient from the consequences which might follow the wife's knowledge of the harm he has done her.

While this policy of concealment coincides with the natural indisposition of the husband to avow his fault, its wisdom is open to question. The fact must not be lost sight of that there are other interests beside that of the husband to be considered, and most important is that of the wife in reference to treatment. Unfortunately in keeping up attempts at deception, the infected wife may not only be made to incur all the individual risks of the disease communicated by her husband, but she is often denied the benefits of prompt and efficient treatment. Incredible as it may appear, many husbands who infect their wives employ every possible means to prevent them consulting a physician from the fear of exposure of their infidelity which must come from the wife's knowledge of the nature of her disease. The physician cannot too strongly arraign the selfishness and lack of humanity on the part of husbands in this regard, and should insist upon the wife receiving proper treatment as the condition of his continuing his professional relation with the husband.

Now, in practice it will be found extremely difficult, in many cases impossible, to treat a woman during the prolonged period necessary to cure and dissimulate the nature of her trouble. Notwithstanding the most painstaking precautions on the part of the physician in concealing the character of the remedies employed, the exercise of his diplomacy in parrying her embarrassing questions as to "why she should have the same symptoms as her husband," etc., and, in persuading her of the necessity of continuing treatment in the absence of all manifestations, sooner or later she is apt to divine the nature of the disease for which she is treated, so that the little comedy of deception and falsehood most often proves a dismal failure.

Thibierge strongly advises that in all cases when the husband has syphilis he should make an avowal of his fault, whether the wife has been infected or not. This simplifies the whole situation. If she has not been infected, there may be an intelligent co-operation between both partners in taking proper precautions against it, and if she has already been contaminated, both can properly be treated, while pregnancy, which would be followed by such deplorable consequences, may be avoided.

To take off the keen edge of the situation, he suggests that the husband might forge the history of an extragenital infection,

the probability of which may be attested by the physician, rather than confess that the disease was contracted from a former mistress or by a chance liaison.

Syphilis and Nurses.—The birth of a child tainted with syphilis introduced into the family a new and dangerous focus of infection, since there is no fact better established than that the cutaneous and mucous accidents of hereditary syphilis are extremely contagious. The child may be a source of multiple contagions; abundant clinical observations prove that nothing is more dangerous to the persons surrounding it than a syphilitic infant.

In France and other Continental countries where it is the custom to confine children at birth to wet-nurses the question of the nourishment of a syphilitic infant assumes a serious importance. A syphilitic child will almost certainly infect a healthy nurse; the nurse upon returning to her home may infect her husband, her own children and through them numerous others of her entourage. Medical literature abounds with records of family and social epidemics affecting in some instances as many as sixteen, eighteen, twenty-three persons or more, the origin of which could be traced to a syphilitic nursling.

In view of the multiple contagions which may originate from a syphilitic nursling, the French law imposes a special obligation upon both the parents and the physician that the nurse should be informed of the nature of the child's disease before she assumes her duties, although it is evident that compliance with the law compels a violation of the secret that one or both parents may be syphilitic. In case of omission to give this information to the nurse, she may recover heavy damages, or a lifelong pension, for the injury received from the infection.

The physician's duty in a situation of this kind is to oppose the employment of a wet-nurse and insist that the mother should nurse her own child. It is a law of syphilis, first formulated by Colles, that a child syphilitic from birth never communicates the disease to its own mother by nursing, even though she herself may be apparently exempt from the disease. Maternal nursing should be insisted upon even when the child shows at birth no signs of having inherited the parental disease, since the possibility of its infection cannot be excluded until a period of several weeks or months has elapsed.

In this country where wet-nursing is not so much in vogue, and in cases where the mother is unable or unwilling to nurse her child, artificial nourishment is usually employed, it might appear that this element of danger is eliminated. On the contrary, when

an ordinary or dry-nurse is employed for the care of a syphilitic infant, the risks of infection differ only in degree. While she is not exposed to contagion from the child's mouth while nursing it, yet she is exposed to multitudinous risks of inoculative contact, incident to preparing or tasting the child's food to see whether it is too hot or too cold, from washing and dressing the infant, from sleeping in the same bed, and from the thousand and one attentions the infant constantly requires. In view of the dangers of infection incidental to the occupation of the dry-nurse in caring for a syphilitic child, it is a question whether the physician would not be justified in warning her of her dangers and of the necessity of taking precautions to guard against contagion.

There is another aspect of the relations between the nurse and the infant in respect to syphilitic infection of interest in this connection. The child may be healthy and the nurse syphilitic. The child is liable to become infected by the nurse and distribute the contagion to the mother and to other members of the family.

In employing a wet-nurse the physician is usually consulted and it is his duty to make the most careful and thorough examination of the nurse in order to be sure that she is free from any taint of syphilis before she is engaged. In employing a dry-nurse for young children, the physician is rarely consulted. My own experience would lead me to believe that it is by no means infrequent for women with syphilis, especially foreigners, to act as nurses for children. In my services at the New York hospital many women applying for treatment as for syphilis have given their occupation as "nurse," apparently oblivious of the fact of their disqualification for this duty not only on moral grounds, but especially from the contagious character of their disease. In two or three instances, nurses have actually brought their little charges to the hospital with them—the parents, of course, being ignorant of this fact—giving as a reason that they could not "get off" for the afternoon. In all of these cases I succeeded in having them give up their employment, either by persuasion or by threats of exposure.

A situation may present itself when a syphilitic nurse to young children, although warned of the dangers to which she exposes them, obstinately refuses to give up a good position. It then becomes a question in view of the risks of infection to the children, their natural protectors, the parents, being ignorant of this danger and unable to protect them, whether the physician is not justified, when persuasion fails, in resorting to the extreme measure of warning the parents of the dangers their children

incur of infection from the nurse. The French law, it would appear, while interfering to protect the wet-nurse from infection by the syphilitic child, does not extend the same protection to the healthy child against infection by the syphilitic nurse. There is no pecuniary liability of the nurse in case the child receives infection, possibly because she is pecuniarily irresponsible.

Syphilis in Domestic Servants.—The same question presents itself as to the line of conduct to be pursued by the physician in relation to syphilis in other servants. Domestic servants, as valets, chambermaids, cooks, etc., are in a certain sense members of the family or household. Their duties bring them into more or less intimate contact with their employers, in preparing food, in the care of the person and clothing, besides affording other opportunities of infection, such, for example, as soiling the seat of the water-closet, the surreptitious use of combs, brushes, sponges, pipes, cigarholders, etc., belonging to their employers. The literature of syphilis insontium abounds in cases in which the disease has been conveyed by servants to employers through common use of eating or drinking utensils, toilet articles, douche-tubes, and many other miscellaneous articles. I have known a fat butler, fairly reeking with syphilis, who, despite my protests, continued his service in a fashionable family. Such modes of contamination of the disease are easily avoided and it is the physician's duty when treating a syphilitic servant in a household to inform him of the possible modes of contagion and, if necessary, insist upon him relinquishing his employment until the dangerous period has passed.

An employer may bring or send the servant to the physician, saying that he has observed certain suspicious symptoms, in regard to the nature of which he wishes to be informed. The physician may find that the servant is syphilitic. Now, in such a case the servant is master of his own secret and the physician cannot reveal it. If the employer brings the servant, the physician is not justified in divulging the syphilitic nature of the servant's disease. He may disguise it under any non-compromising name and advise that the servant relinquish his place until he is cured. If the employer sends the servant with a letter, the physician may write an open letter, explaining the contents to the bearer, leaving it to his own discretion to deliver it or not, as he sees fit. In this way the party most interested is responsible for revealing the nature of the disease.

Industrial Infection.—There are many industrial occupations which may be the means or the occasion of spreading syphilis. Such cases as the following have occurred under my observation:

A baker who had a syphilide of the fore-arm, with palmar lesions which were cracked and open, who continued, despite my remonstrances, his occupation of mixing and making bread for a score or more families; waiters in restaurants and hotels, who had syphilis in a dangerous contagious form; numerous cases of barbers and hair dressers who followed their occupations with syphilis in full activity of secondary manifestation; cigar and cigarettemakers, men and women with their mouths full of mucous patches.

It is well known that vendors of toy whistles and balloons are accustomed to test the toy by blowing it before selling it to the children. Vendors of fruit moisten cloths with their own spittle to give it the luster that makes it attractive to prospective purchasers. Numerous cases are on record in which syphilis has been contracted in this way. While the physician recognizes the imminent danger of contagion from these sources, he is powerless to interfere except by attempts to enlighten the patients as to the possible danger of their infecting others and to persuade them to relinquish their employment. While he recognizes these occupations by syphilitics as a menace to the public health, he is not authorized to act.

The only practicable means of preventing infection from these sources would be for the sanitary authorities to forbid any person with active syphilis to engage in the occupation of nurse, domestic servant, baker, waiter, barber, vendor of toys, or in preparing food or drink—the same as is done in the prophylaxis of leprosy in certain countries. In order to make such a law practicably effective, the physician should be compelled to report the existence of syphilis in any one engaged in these proscribed occupations, and the board of health could then employ the necessary coercive measures. Contagions from these sources compared with those from prostitutes are relatively infrequent, but we must recognize the fact that the obligation to protect the innocent from a lifelong infection is much greater than the obligation to protect those who voluntarily and knowingly expose themselves to chances of contagion in an immoral way.

There are many other relations of syphilis which involve the question of the medical secret, such, for example, as mutual benefit societies, life insurance societies, syphilitics in hospitals and dispensaries, etc. Parents may bring their sons or daughters to the hospital and, after examination, demand to know the nature of the trouble. If it be of venereal nature, the physician has no right to reveal it without the consent of the patient. I have more than once received a letter from the mother of a young

woman about as follows: "I accidentally found a card belonging to my daughter, showing that she was being treated in the 'Skin and Venereal Class' of the New York hospital. I believe her to be a good girl. Please tell me if she has a venereal disease." My practice has always been to look up the name and diagnosis; if the patient has a non-syphilitic skin trouble, to assure the mother that her suspicions are groundless; if specific, that the rules of the hospital forbid the communication of the nature of a patient's disease.

The profession should recognize the obligation to protect the secrets of syphilitic patients in hospitals, as far as possible. The publication of pictures of cases revealing syphilis in a subject is a breach of professional discretion.

It is well known that syphilis may be conveyed to the physician in the discharge of his duties and also that syphilis may be communicated by physicians to patients by the use of tongue depressors, speculums, porte-crayons of nitrate of silver, Eustachian catheters, eye, nose, throat and dental instruments. If the physician is unfortunate enough to convey syphilis in this way, he should consider it his duty to inform the patient of the nature of the trouble, that they may avoid the chances of infecting others and at the same time receive proper treatment.

When the physician acquires syphilis it may be accepted as a rule of professional conduct that he should discontinue his professional work so long as there is the most remote danger of contagion through its exercise. More than 50 cases of professional syphilis have come under my personal observation. One case was that of a physician with a large obstetrical practice in this city, who had a digital chancre, the nature of which was not recognized. He came to me nearly a month after the appearance of constitutional symptoms. He had never suspected that the insignificant, dusky-red infiltration around the ungual border was the initial lesion. During this period of three months, before the nature of the lesion was recognized, he had attended 40 or 50 women in confinement.



State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

PRACTICE OF MEDICINE—LEGAL REGULATION.

(Concluded from June.)

Missouri.—Diploma not required. Examination fee, \$15. Good for one re-examination within one year. Matriculants in the Missouri Medical college, and graduates of said institution prior to March, 1901, are exempt from examination.

Montana.—Diploma and examination required. Fee, \$15. Good for one re-examination within six months.

Nebraska.—Diploma and examination required. Fee, \$25. Nebraska Medical college graduates' fee only \$10. Reciprocates with Michigan and Wisconsin.

Nevada.—Examination not required. Grants license upon diploma. Fee, \$25.

New Hampshire.—Diploma and examination required. Fee, \$10. Good for re-examination after six months.

New Jersey.—Diploma and examination required. Fee, \$25. Good for one re-examination within one year. Reciprocates with Maine, Maryland, Virginia, Texas, Illinois and Washington on payment of \$50.

New Mexico.—Examination not required for graduates of recognized colleges. Graduates of unrecognized colleges must take examination. Fee, \$25.

New York.—Diploma and examination required. Fee, \$25. Junior students may take anatomy, physiology, chemistry and hygiene. Successful candidates are exempt from these subjects in finals.

North Carolina.—Diploma and examination required. Fee, \$10. Licentiates from other states may be admitted to examination.

North Dakota.—Diploma not required. Examination fee, \$20.

Ohio.—Diploma and examination required. Fee, \$25. Good for one re-examination. Reciprocates upon examination certificates with Michigan, Illinois, Indiana and Wisconsin.

Oklahoma.—Diploma and examination required. Fee, \$5. Ten years continuous practice is accepted in lieu of a diploma.

Oregon.—Diploma not required. Examination fee, \$10.

Pennsylvania.—Diploma and examination required. Fee, \$25. Good for re-examination within two years. Reciprocates with New York upon payment of fee of \$15.

Philippine Islands.—Diploma and examination required. The board may pass a graduate without examination and may examine an applicant without a diploma. Fee, \$20.

Puerto Rico.—Diploma and examination required. Fee, \$10.

Rhode Island.—Diploma and examination required. Fee, \$10. Certificate, \$2.

South Carolina.—Diploma and examination required. Fee, \$5. Returned to unsuccessful candidates. Graduates of state colleges requiring four years' course are exempt from examination.

South Dakota.—Diploma and examination required. Fee, \$20. Good for one re-examination.

Tennessee.—Diploma not essential. Examination fee, \$10 for permanent license; \$5 for temporary license; \$5 extra for permanent certificate.

Texas.—Diploma not required. Fee, \$15. Reciprocates with Delaware, District of Columbia, Georgia, Iowa, Louisiana, Maryland, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oregon, Pennsylvania, South Carolina, Utah, Virginia, Washington.

Utah.—Diploma and examination required. Fee, \$15.

Vermont.—Diploma and examination required. Fee, \$5.

Virginia.—Diploma and examination required. Fee, \$10. Under-graduates may be examined in such studies as they have passed in their own medical colleges. Successful candidates are exempt from examination in these studies at finals.

Washington.—Diploma and examination required. Fee, \$10.

West Virginia.—Diploma not essential. Examination fee, \$10. Good for one re-examination within one year.

Wisconsin.—Diploma and examination required. Fee, \$15, and \$5 for license. Reciprocates on basis of license and diploma with Michigan, Indiana, Nebraska, Maryland and Kentucky; on basis of license by examination with Illinois, Ohio and Maine. Fee, \$25.

Wyoming.—Examination not required. Grants license upon diploma. Fee, \$5. If examination is taken in lieu of diploma a fee of \$25 is charged.

The following states permit the practice of physicians from other states in consultation: California, Connecticut, Delaware, District of Columbia, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Philippines, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Vermont, Wisconsin, Wyoming.

The following state boards license graduates of their own state colleges without examination: Illinois, Indiana, New Hampshire, Ohio, South Carolina, Tennessee, Wisconsin.

The following boards are empowered (discretionary) to recognize certificates of other state examining boards without further examination: California, Delaware, District of Columbia, Illinois, Indiana, Kansas, Maine, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Puerto Rico, Texas, Virginia, Washington, Wisconsin.

The following state boards may accept licenses of other states or countries in lieu of a diploma: California, Kansas, Maryland, Nevada, New Hampshire, North Carolina, Ohio.

The following state boards under certain conditions may examine non-graduates in medicine: Alabama, Arkansas, Colorado, Hawaii, Indian Territory, Kansas, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon, Philippines, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, West Virginia, Wyoming.

OHIO MEDICAL LAW DECLARED VOID.

In the Common Pleas Court at Sandusky, Ohio, Judge Reed has ruled that the Ohio state medical law is unconstitutional, because it limits the right to practice without the use of drugs or medicines to osteopaths, and by the rule of exclusion Eddyites are prohibited.



Medico-Legal Bulletin.



PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. 2

JULY 1904

No. 10

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

\$1.00 Per Annum

SUBSCRIPTION RATES

Single Copies 15c

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COMMEND THE FAITHFUL PHYSICIAN.

The Public Ledger recently announced that two New York physicians attached to the staff of Bellevue Hospital had contracted tuberculosis as a result of their faithful attention to the unfortunate patients entrusted to their care, and referred to the fact that some eighteen more Bellevue internes are known to have become victims through labors among the tuberculous applicants for aid at that hospital. The previous announcement, however, did not record, nor will any future number be called upon to notice, any resignations from the Bellevue staff of physicians, nor any lack of young medical men willing to take up the work of those who fall its victims. It is only one fact of many illustrative of the heroism of the medical profession. The doctor's devotion to duty, his willingness to sacrifice himself to others and his habitual disregard of personal comfort and safety are not so picturesque as the loyalty, the unselfishness, the bravery, of the soldier in the field, but they are of infinitely more human advantage, and of heroic quality no less to be admired. The physician does not march into the presence of danger enthused by the sound of martial music, allured by the advance of his country's flag, comforted by the touch of his comrades' shoulders, certain of the applause of the world. His adventure is prosaic and lonely. Only in the appreciation of the thoughtful is its heroism considered.—Public Ledger, Philadelphia.

PHYSICIANS AND THEIR CODE.

If the medical profession fall short in any manner of the full measure of dignity and altruism which its traditions indicate, it is not because the ideals of the profession are forgotten. Perhaps it is rather that the traditions and ideals of the medical profession are so high as to be unattainable by the majority of the members of the profession, no matter how well meaning they may be, nor how hard they may strive.

The picture which Dr. Didama drew in his address, "The Ideal Physician," before the graduating class of the Albany Medical College last week suggests this difficulty. Dr. Didama's ideal physician is a diligent student of books because he feels it common honesty to give to his patients the benefit of all the discoveries and improvements which have been made in the healing art. "He must know," said Dr. Didama, "the tactics employed by the thousand enemies that attack this citadel of life. He must be familiar with the multiform weapons of defense, not only the old and efficient, but the new and still more efficient hygienic weapons to fortify the citadel; therapeutic weapons to attack the foe; weapons contributed by the various kingdoms of nature, weapons supplied by the four elements, the ancients' fire, air, earth, and the waters under the earth."

From the study of these things, which alone are enough to keep the scholarly faculty fully exercised, the physician whom Dr. Didama has in mind gathers the theory of his profession. Through them, and by practice, he has acquired tact and skill. The education of the hand and brain, however, are but a part of the education of the ideal physician. His heart, his moral nature, his ethical side demand equal attention. The profession of the ministry makes hardly a higher demand upon the higher natures of those who follow it. Diligence, steadiness, humanity, strict loyalty to the interests of the patient, perfect secrecy, not only with regard to his personal and domestic life, an obligation to take every opportunity to strengthen good resolutions and to warn men and women against vicious courses, such are a few of the requirements of the code.

No discovery or device which a physician may originate may, according to the code, be kept for his own advantage. The best invention for saving life and health must be made public without delay. The most marvelous discovery in therapeutics must not be kept secret. These requirements, along with a broad-mindedness which welcomes every suggestion of new methods of fighting disease, and looks on all honest efforts with at least

tolerance, an entire indifference to the bubble reputation, and a faithful adherence to the Golden Rule make up the sum of attainments after which the physician is asked to strive. Dr. Didama would also have him abstain from alcohol and tobacco.

It is a high and honorable code. To have such a system of ideals is a great thing for a profession. We need not marvel that so many of the members of the profession fall short of it, but we ought to be thankful that the ideal is so faithfully and constantly held up by those who have won authority and respect to those who stand at the threshold.—New York Times.

THE VALUE OF THE PHYSICIAN'S SERVICES.

The charge to be made for professional services will necessarily vary with a number of different conditions. This proposition is recognized in the practice of the law, and it should be equally so in that of medicine. Occasionally a judge on the bench may decide differently, but a moment's reflection will show the error of such a decision. There are to be taken into account especially the nature of the case, the character of the treatment to be pursued, the time consumed, the skill of the physician, and also the station—public and private—of the patient. The physician is, by force of circumstances, compelled to have a varying fee even for similar service. He can not elect to treat only the rich; neither can he afford to treat only the poor. He gives much of his service gratuitously, so that none is deprived of the opportunities for relief afforded by his skill and ability. For these reasons the physician's fee can not be a fixed and inflexible one. This would seem to be the view held by Judge Ashman, of Philadelphia, as expressed recently in a decision rendered in the Orphans' Court: "The life of a rich man," he said, "is worth more than the life of a poor man, and the physician has a right to charge the millionaire more for his services than he does the laborer. * * * * The physician is unlike the merchant, who has goods of different quality to sell at various prices. He must give his best service in every case. But it does not follow that the service is worth the same in every case. * * * * Human life has a pecuniary value of variable quantity, greater in the millionaire than in the laborer. Thus, the practitioner of common sense has a maximum and a minimum charge and makes out his bills to suit the pecuniary circumstances of the patient."

Judicial Decisions.



Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

ROENTGEN RAYS IN THE DUBLIN LAW COURTS.

The surgical possibilities and the legal liabilities of the use of the Roentgen rays were—for the first time within the British dominions—exhaustively investigated in the Dublin Law Courts last month. A lad, a resident of Galway, the seat of one of the “Queen’s Colleges,” was suspected of having needles lying within or near one of his knee joints. Professor Colohan (of Queen’s College) sent him to the assistant in the physical laboratory, a man named Haire, to have the joint skiagraphed, in order to perfect the diagnosis. The result was not satisfactory, and after some repetition a Roentgen ray burn appears to have developed. Ultimately the boy was sent to Dublin for advice and treatment, and the comments there made on the origin of the cutaneous sore led to the legal proceedings. There were three actions brought by the guardians of the boy—one against Dr. Colohan, one against the laboratory assistant, Haire, and one against the college authorities.

The trial lasted seven days; twelve K. C.’s were retained throughout; the most noted experts were summoned from the other side of the Irish channel, and those of Dublin were necessarily pressed to the front. The evidence of Dr. W. S. Haughton, the premier Roentgen ray specialist of Dublin, was the conspicuous expert feature of the whole trial. Every possible aspect and every practical property of the Roentgen rays, in their relationships with human tissues, were thoroughly thrashed out in open court, and the most up-to-date Roentgen ray machinery was made to display its modes of action to the jury. After the brilliant display of native science and native wit, nobody was surprised that the Roentgen ray specialists carried the opinions of the jury, and that a verdict was recorded in favor of the defendants. The result must have taught something to the lawyers, as well as to the general medical and lay public for the

trial was one of the most expensive that has taken place in Dublin for a long period, and the plaintiffs do not appear to be persons of any substance.

THE VERDICT.—Judge Gibson's charge to the jury occupied about three hours, and at the close he submitted the following series of questions for their consideration. Their perusal will well repay attention. We subjoin thereto the answers which were given by the unanimous decision of the jurors, after a conference of one hour:

1. Were the Queen's College, Galway, and Haire, or one, or which of them, employed for reward to photograph by Roentgen rays in December, 1902, and in April, 1903? Haire was so employed. College was not.

2. Was the sore caused by the rays? Yes.

3. Were the rays negligently applied as regards:

(a) Distance? No.

(b) Duration of such exposure? No.

(c) Consecutive multiplication of exposures? No.

(d) The type of machine? No.

4. Was the sore caused by the operation—

(a) Of December 15? Cannot say which.

(b) Of December 26 and 27? Cannot say which.

(c) Aggravated by those in April? No.

5. (a) Did the operation of Dr. Colohan, for which Haire is not responsible, contribute to the sore? Yes.

(b) Did the operation of Haire, for which Dr. Colohan is not responsible, contribute to the sore? Yes.

6. (a) Was Haire negligent in applying the rays? No.

(b) Was Dr. Colohan negligent in applying or superintending? No.

7. Before the rays were applied in April was:

(a) Dr. Colohan negligent in not diagnosing the sore as caused by Roentgen rays? No.

(b) Was Haire so negligent? No.

8. (a) Was Dr. Colohan negligent in applying the rays in April after the sore appeared? No.

(b) Was Haire so negligent? No.

9. To what damage, if any, is the plaintiff entitled? None.

10. Is any, and what amount of such damages attributable to acts of Dr. Colohan only? Not answered.

(b) Is any, and what amount thereof attributable to acts of Haire only? Not answered.

—American Medicine.

LIABILITY FOR MEDICAL ATTENTION—"DOWIEISM."

The Supreme Court of Indiana recently affirmed the decision on the "Christian Science case" in which the Clinton County court discharged Joseph Chenoweth from a prosecution for involuntary manslaughter, in allowing his baby to die of acute pneumonia without calling a physician. The baby was nine months old, and had whooping cough. The disease finally became acute and Chenoweth called in an elder, who "annointed the child with oil and prayed for the healing thereof." He also communicated with one Dowie at Chicago and caused him to pray for the child. His neighbors urged that a physician be called, but he refused to have a physician or to give the baby medicine, because he believed in "Divine healing," and offered and cited the "Word of God" as his justification for the refusal. Chenoweth was able to hire a physician had he desired one.

The physicians who were called as witnesses against Chenoweth testified that so young a baby would probably have died if a physician had been called after bronchial pneumonia developed, but that its life could probably have been prolonged. The trial judge held that there was no testimony that the father's neglect caused or even materially hastened death.

The Supreme court really decides nothing except that the appeal was not so presented that it could decide the important public question which the state sought to have reviewed, and thereby determine and settle in this state the law applicable to cases like the one at bar.

But Judge Jordan, speaking for the court, quotes with approval from cases in New York, Canada and England, in which parents have been convicted of manslaughter for neglecting sick babies, where the courts held that religious belief was no excuse for not providing medical care and attention. The decision by the highest court of British Columbia, where the father, a "Zionite," refused to call a physician for his children when he knew they had diphtheria, is stated to the effect that the person who fails to provide necessary medical attention and remedies is criminally responsible and that a conscientious belief that it is against the teachings of the Bible is no defense. Judge Jordan concludes that the question involved is one of public importance, and if there is an absence of law in this state in respect to a case like this, the legislature should promptly deal with the matter by proper legislation.

ACT AS TO MANUFACTURE OF CLOTHING VALID AS TO HEALTH LAW.

The Court of Appeals of Maryland, in the case of *State vs. Hyman*, holds constitutional, as a health measure, the legislation of 1902 regulating the manufacture in tenement and dwelling houses of wearing apparel intended for sale. It says it supposes that it is a matter of fact of which a court may take judicial notice that the manufacture of wearing apparel in improperly ventilated, unsanitary and overcrowded apartments will likely promote the spread of, if it does not engender, disease, and it is obviously within the police power of the state to regulate the number of persons who may be employed in any tenement or other establishment where this manufacture is carried on, so that the public health may be conserved. Again, referring to a statutory provision that at least 400 cubic feet of cellar space should be allowed in each room for each occupant in manufacturing establishments, and that a permit be secured setting forth the number of persons allowed to be employed in each room, the court says that such a regulation is strictly and essentially a health regulation.

CONSTRUCTION OF STATUTE AS TO "OTHER AGENCY."

The Supreme court of New Jersey holds, in the case of *State vs. Herring*, that an osteopath whose treatment of his patient consists simply of the manipulation of the body, does not violate that provision of the act of May 22, 1894, section 8, which forbids the applying of "any drug, medicine or other agency or application" by an unlicensed person. It says that the phrase "other application" is a very broad one, and, in its general sense, would undoubtedly include the use of the hands. But it is conjoined to the terms "drug" and "medicine," which are much more special; and, under the maxim, "*Noscitur a sociis*" (the meaning of a word is or may be known from the accompanying words), its interpretation should be such as will confine it to the class in which its special associates stand. Moreover, as a phrase employed to create and define offenses unknown to the common law, it must be strictly construed. In forbidding an unlicensed person to apply any drug or medicine for remedial purposes, the legislature plainly contemplated the use of something other than the natural faculties of the actor—some extraneous substance. A similar restriction must attach to the more general

terms "agency" and "application," and they must likewise be held to import only some extraneous substance.

INJURING OWN BODY, OR ANOTHERS WITH ASSENT— ABORTION.

The Supreme Court of Errors of Connecticut says, in the case of *State vs. Carey*, where there was a conviction of an attempt to produce a criminal abortion, that, ordinarily, a man may injure his own body by his own hand or the hand of an agent, without himself violating the criminal law. And the agent who injures another's body with such assent may commit a crime of which the injured party is not guilty. A murderer can not justify himself by proving the assent of his victim. Non-interference with a man's control of his person is not extended to the disposition of his life; but taking one's own life is a thing distinct from the crime of murder. If a man in a moment of weakness should assent to the opening of a vein by another for the purpose of ending his life, and, when in the immediate expectation of death, should make a statement of the facts attending the assault, it would hardly be asserted, on trial of his assailant for felonious killing, that the dying declaration must be received with all the infirmities attending the testimony of an accomplice in the crime. This distinction between a man's injuring his own body himself, or assenting to such injury from another, and the crime that may be committed by another in inflicting such injury, has been strongly drawn in crimes akin to the one under discussion. At common law an operation on the body of a pregnant woman, with intent thereby to cause her miscarriage, is an indictable offense, but it is not an offense in her to so treat her own body, or to assent to such treatment from another; and the aid she may give to the offender in the physical performance of the operation does not make her an accomplice in his crime. It is a crime which, in the nature of things, she can not commit. And so it has been held, under various statutory forms of this offense, that the victim of an attempted abortion can not be an accomplice in a crime which consists in an operation on her body, with or without her consent, by another person, with intent to produce abortion. Again, the court says that the criminal intent and moral turpitude involved in the violation by a woman of the restraint put on her control over her own person is widely different from that which attends the man who, in clear violation of law, and for pay or gain of any kind, inflicts an injury on the body of a woman endangering health and perhaps life.

HOLY GHOSTER IS GUILTY.

The Rev. Frank W. Sandford, of Shiloh, Me., the organizer of the Holy Ghost and Us Society, was found guilty of manslaughter in the Superior court, at Farmington, Me., recently, in criminally withholding medicine from Leander Bartlett, fourteen years old, who subsequently died of diphtheria. The jury was out an hour and forty minutes. Sandford immediately appealed, pending which no sentence will be passed.

NOT EVIDENCE OF INSANITY.

The Supreme court of Idaho holds, in the case of Curtis vs. Kirkpatrick, that the fact that one is a believer in spiritualism, and makes many statements apparently unreasonable, is not evidence of insanity.

GRATITUDE.

What a lovely thing is the gratitude
Of the patient saved from pain;
For the labor we do for the sick and weak,
Our labor of hand and brain.
What a wealth we have for our daily work,
For those who are sad and ill.
How sweet to the ear is the grateful word—
Until we present the bill! —A. J. of S. and G.

YE ANCIENT DOCTOR.

Sir Arthur Conan Doyle practiced medicine before he began to write, and in one of his scrap-books he has a newspaper advertisement that he cherishes because it shows well the low standing of many doctors in the eighteenth century. Sir Arthur clipped the advertisement from a newspaper of the year 1787. It reads:

“Wanted, for a family not blessed with good health, a sober, discreet and steady person to act in the capacity of doctor and apothecary. He must often act also as a steward and butler, and occasionally dress hair and wigs. He will be required to read prayers and sometimes, on wet Sundays, to preach a sermon of two. A good salary will be paid and a preference will be given to such an one as, besides the above qualifications, can mend clothes.”—Daily Medical Journal.



Medico-Legal Bulletin.



ORIGINAL ARTICLES

PROFESSIONAL RELATION.

We herewith present an article of great merit from The Medical Critic, by W. A. Purrington, Esq., a learned member of the New York bar:

It needs no argument to demonstrate the general duty in honor and good morals, of physicians, lawyers and priests to keep secret the knowledge acquired through their professional relations. Necessity opens to them the closets where skeletons are concealed. Many, probably most, patients do not fully inform physicians because they naturally shrink from letting even them know their secrets, and not a few suffer rather than go to certain specialists lest, the fact of their visit transpiring, the nature of their maladies may be inferred. Yet there are physicians who, quite unconscious of their ethical sin, babble of their patients, as Falstaff did of green fields. The legal limitations of this duty are not, however, so easy to fix as might, at first sight, appear. Early in the year 1899, a conference of Parisian advocates concluded, after discussion, that the publication in books of observations made upon hospital patients constituted violation of professional secrecy enjoined by Article 378 of the French Penal Code.

That opinion has not, of course, the force of law and goes beyond the practice of English-speaking countries, although even in those countries, since it is an ancient rule of law that where a duty is imposed damages may be recovered for injuries resulting from its breach, an action may be maintained against medical men revealing professional secrets; just as in the Michigan case of *De May vs. Roberts* (46 Mich., 160), damages were awarded against a physician permitting his lay attendant unnecessarily to enter the room of a patient in childbirth.

It is purposed here to discuss the principle of this rule of privilege and the physician's duty, as fully as limited space will permit.

Upon the threshold should be noted these fundamentals:

1. The privilege is not one of common law, but is statutory.
2. Its purpose is to protect the frank disclosure of a patient's clinical history to his medical adviser and thereby encourage the former to communicate those facts necessary for his treatment, that he might withhold if he thought them likely to be revealed. The privilege belongs, therefore, to the patient, not to the physician; it is for the protection of the former, not for the benefit of the latter. This principle is lost sight of by those who speak of the physicians's privilege.
3. Circumstances affect the application of the rule, and sound public policy has led to narrower constructions in criminal than in civil cases, to the end that the rule may not be used in aid of crime. Indeed, some statutes in terms limit this privilege to civil cases.
4. The privilege, being personal, may, like all personal privileges, be waived by him for whose benefit it exists; and,
5. It exists only as a rule of evidence in the forum, not as a mandate of substantive law for breach of which punishment is provided.

The common law recognized the confidential nature of communications by clients to attorneys upon a theory that, owing to the complexity of laws, laymen cannot understand their rights unaided by the advice of those familiar with legal mysteries, who, in turn, cannot form sound opinions without full knowledge of the facts; wherefore, clients should be free to impart necessary information to their counsellors in the assurance that their confidences will be sacred. For, as it is for the benefit of all men in a free state that each should have the full protection of the law, it seemed reasonable that he who sought that protection should not be hindered in his search. Thus, even the murderer might with security confess his crime to his legal defender; but no privilege attached to communications of one seeking legal advice as to how safely to commit a crime in futuro, or to information of fraud or crime committed after the employment. It was essential, moreover, to the existence of this privilege that the professional relations of client and counsellor should exist, and that the protected information should have been acquired in the course of and for the necessary purposes of the professional employment; for the privilege did not attach to all information acquired in the course of such employment, even though otherwise it might never have been acquired. Nor did the common law rule protect the client if he made his communications to an attorney's clerk or to a layman, nor if a layman

overheard confidences made to an attorney. Obviously, therefore, the rule was intended not to establish a general standard of honor, but solely to enable a litigant to obtain justice who might be deterred from seeking it if he could not with safety make a clear breast of his case.

But common law accorded no such privilege to the communications of patient or penitent; and English judges have commented on the inequality of the rule. In the *Duchess of Kingston's* case, Lord Mansfield said that while the law would compel a surgeon to reveal professional confidences, it would be a breach of honor and a great indiscretion to reveal them voluntarily. And in *Broad vs. Pitt*, Chief Justice Best held that although communications to the clergy were not privileged and would be received by him if voluntarily offered in evidence, yet he would not compel a clergyman to reveal what a prisoner had said to him in auricular confession. But these expressions are not precedents. In our own country, New York seems to have been the first state to ordain that secrets of the sick room and the confessional are entitled to the same privileges as those of the attorney's office; and early in the nineteenth century the revisers of its statutes framed this rule, which has been adopted, with more or less change of phrase, in a majority of the other states and territories:

"No person duly authorized to practice physic or surgery shall be allowed to disclose any information which he may have acquired in attending any patient, in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him, as a surgeon."

This provision, with slight change of phraseology, constitutes Section 834 of the New York Code of Civil Procedure, now reading:

"A person duly authorized to practice physic or surgery shall not be allowed to disclose any information which he acquired in attending a patient, in a professional capacity, and which was necessary to enable him to act in that capacity."

That the sole purpose of this rule was to enable patients to disclose frankly to physicians their physical condition and clinical history without fear of publicity, and not that what they were willing to have made public should be concealed for the benefit of others, and, possibly, to their own detriment, or that the privilege should be used in aid of fraud, appears from this note of the revisers:

"The ground on which communications to counsel are privileged is the supposed necessity of a full knowledge of the facts, to advise correctly, and to prepare for the proper defense or prosecution of the suit. But merely the necessity of consulting a medical adviser when life itself may be in jeopardy, is still stronger. And unless such consultations are privileged, men will be incidentally punished by being obliged to suffer the consequence of injuries without relief from the medical art, and without conviction of any offense. Besides, in such cases, during the struggle between legal duty on the one hand and professional honor on the other, that latter, aided by the strong sense of the injustice and inhumanity of the rule, will, in most cases, furnish a temptation to the perversion or concealment of truth, to strong for human resistance. In every view that can be taken of the policy, justice or humanity of the rule, as it exists, its relaxation seems highly expedient. It is believed that the proposition in the section is so guarded that it can not be abused by applying it to cases not intended to be privileged."

This apparently simple rule has been ever since its enunciation the subject of construction in a host of cases. Fortunately, physicians have not to do with the conflict of authorities. Their duty is simply to abstain from revealing or discussing the patient's illness without the latter's assent, unless compelled to do so by order of the court. There may conceivably be cases wherein a high sense of professional honor or fidelity might lead a physician to submit to punishment rather than violate a confidence, but they are not likely to arise, and conscience may generally be satisfied if testimony be given under the instructions of the court that it is not confidential within the rule of law.

It may well be, however, that this sense of professional honor, or, in its absence, an objection of counsel, may cause a medical man loss in fees or in other regards. Thus, for example, in a recent Scottish case, a surgeon claimed to recover, under an accident policy, compensation for his chance inoculation with syphilitic virus in treatment of a female patient. The bona fides of the claimant does not seem to be disputed; but the company's counsel demanded the patient's name, which the medical man refused to reveal upon the ground that to do so would violate his Hippocratic duty. For this refusal he was non-suited. And although, upon the assumption that the plaintiff's good faith was not suspected, this particular result was an injustice; still it is obvious that it would not do to allow such accidents to be explained away so innocently without the test of cross examination.

In illustration of these principles, examination of some difficulties that courts and lawyers have found in applying this rule may be instructive.

The privilege, as has been said, extends not only to confidential communications, but to all information acquired in attendance on a patient by one duly authorized to practice physic or surgery, providing it was necessary to enable him to act in his professional capacity—and the extent of the privilege is to prevent disclosure of such information on the witness stand, the statute being, as already pointed out, only a rule of evidence, not an inhibition of gossip.

Now, who is duly authorized to practice physic or surgery? Obviously one who has conformed to all the state laws regulating medical practice. But in New York and almost every other state there is necessary to such authorization, first, license; second, registration. Medical practice without either qualification is a misdemeanor. Accordingly, it has been held that a communication is not privileged if made to an unlicensed practitioner; *Wiel vs. Cowles* (45 Hun., 307), or to a layman sharing a physician's office, *Kendall vs. Gray* (2 Hilt., 300). But in the recent case of *McGillicuddy vs. Farmers' Loan and Trust Company* (26 Misc., 55), an unregistered physician was forbidden to testify under this rule upon these facts: Dr. A. sued the trust company, a temporary administrator, for \$24,700, the alleged value of medical services to its intestates. He did not offer to testify personally as to his treatment, but offered the testimony of Dr. B., a consultant, licensed, but not registered. The court excluded B.'s testimony, holding that while the witnesses' failure to register might subject him to punishment for practising without authority and prevent him from collecting fees for services, it did not open his lips to violate the patient's privilege; for, said the court:

"The statute was not passed for the pecuniary benefit of the medical fraternity, but to silence its voice, and in this manner protect those seeking medical assistance by excluding all inquiry which may offend the sensitiveness of the living or reflect in the slightest on the memory of the dead. It was to throw the mantle of charity over the sick and unfortunate and elevate the medical practitioner to the high plane with the clergy and good Samaritan, leaving him to protect his fees according to professional ethics so long as he does not infringe the humanitarian sentiments embraced in the statutory prohibition. * * *

"Registration is a regulation which concerns only the practitioner and the state. It was not intended to infringe upon the rights of patients and does not assume to do so. * * *

"To bring the case within the statute it is sufficient that the physician was duly licensed or attended as such upon the patient and obtained the information in that capacity."

This is contrary, certainly, to the letter of the law, and its logic would appear to cover equally the case of any unauthorized practitioner in whom the patient should confide, mistakenly believing him to be duly authorized, even though that practitioner were a layman. The decision would be more easily understood if the New York code read as do some of the statutes of other states adopting its principle, "A licensed practitioner," or "A practicing physician," or "A regular physician," instead of reading, as it does, "A person duly authorized to practice." Yet the decision, although on circuit, was rendered by an able judge, and substantially follows the words of the Court of Appeals in the criminal case of *Pierson vs. People*, which will be mentioned further on.

Again, what is attendance that constitutes professional relation? It is not, for instance, casual advice to a friend (*Gibson vs. Ins. Co.*, 37 N. Y., 580); and a physician who has often met a patient socially may testify as to the latter's mental condition, providing he can exclude from his mind in answering the questions all information acquired by him in strictly professional attendance. (*Fisher vs. Fisher*, 129 N. Y., 654); again, in a border line case, where a physician called in a surgeon as an expert to examine his patient with a view to offering or excluding the examiner's testimony on trial, it was said that this fact would not alone exclude the expert's testimony, the burden being on plaintiff to show professional attendance within the meaning of the statute. (*Henry vs. New York R. R. Co.*, 57 Hun., 76.) The court held that the information was acquired and necessary not for the treatment of the case, but only to ascertain the nature and extent of the injury, and that under the circumstances the professional relation did not appear to have existed. During the present year the Court of Appeals, reversing the Appellate division of the Supreme court, held that an ambulance physician of the J. Hood Wright Memorial Hospital, and, incidentally, in the pay of the Metropolitan Street Railway Company, was not in attendance because he rendered first aid to the plaintiff, rode in the ambulance with him to the hospital, but had no other relation with him for ten days when he interrogated him on behalf of the Company. (*Griffiths vs. Railway Co.*, 171 N. Y., 106.)

This question, "What constitutes professional attendance?" has arisen most interestingly in criminal cases.

In *Hewitt vs. Prime* (21 Mend., 79), a father's action against his daughter's seducer to recover for loss of her services, it was held that the seducer's conversation with a physician regarding the procurement of an abortion was not privileged, it being doubtful, at least, whether under the circumstances the relation of patient and physician existed, and certain that the information conveyed to the physician by the seducer was not necessary to aid the former in the treatment of the case.

In *People vs. Stout* (3 Park Crim. Rep., 670), two physicians examined in jail the prisoner charged with murder, upon whose body were injuries indicating a struggle. They told him that the coroner had asked them to examine him, felt his pulse, looked at his tongue, and acted as physicians generally act in making examinations, but did not prescribe nor indicate that they would do so, but one admitted to the court his belief from the prisoner's demeanor that the latter regarded them as examining him with a view to treatment.

The court held that, although the relation of patient and physician did not technically exist, yet the fact that the prisoner, apparently considered that it did, brought the case within the statute's spirit and justified the exclusion of the physician's testimony. Since the decision, however, the New York Court of Appeals has held in *Kemler's case* (119 N. Y., 580), that a physician sent by the prosecutor to examine the prisoner's sanity accused of murder, might testify as to his mental condition; and in *Sliney's case* (137 N. Y., 570), that a physician sent by the prosecutor to examine into prisoner's sanity was not attending the patient and his knowledge was not acquired in the professional relation. So, too, in *Schuyler's case* (106 N. Y., 298), it was held that a jail physician's testimony was admissible as expert testimony for the prosecution upon the prisoner's mental condition, even though the witness admitted that he had had medical charge of all the prisoners, and, at the request of both sides, "kept his eye on" and "saw to defendant as he did to the others when he needed it," and, therefore, being unable to divest his mind of the impressions of defendant, formed while in the jail, asked to withdraw his answer. This is an extreme case, and two of the ablest judges of the court, Rapallo and Andrews, dissented from the conclusions.

In *Schuyler's case*, and the still more recent one of *Koerner* (154 N. Y., 355), it was held that he who objects that a physician's testimony recites information acquired in a professional capacity and necessary to the treatment of the case, has the burden of proving both these facts, and this rule is again laid down in *Griffith's case* (Supra).

This privileged information is not limited to communications by the patient. It may be derived from physical examination, from statements of third persons and through any of the senses. In *Nelson vs. Village of Oneida* (156 N. Y., 219), plaintiff claimed damages for injuries alleged to have been sustained through defendant's negligence; the defense sought to show by a physician who had attended plaintiff in childbirth that she had an umbilical hernia prior to the accident. The witness admitted that his knowledge of her physical condition was acquired in an examination of her as a patient, and was necessary to enable him easily and understandingly to treat the case, and the Court of Appeals held that his testimony was properly excluded, because his discovery of the hernia was a necessary incident of the necessary bodily examination, the fact that he did not treat the hernia being immaterial.

This case of *Nelson* also illustrates this construction of the phrase "necessary to enable him to act in that capacity." The information need not be absolutely necessary from a medical standpoint, if it be acquired for the purpose of treatment.

By saying that this rule is only one of evidence and the forum it is meant that such disclosure shall not be made in the face of objections by opposing counsel, under the statute of the jurisdiction; so long as no objection is made the testimony will probably be admitted, although the court has power to exclude such evidence of its own motion. Thus the Court of Appeals said in *Hoyt vs. Hoyt* (112 N. Y., 515): "We do not think the rule of the statute goes further than to stamp such communications as confidential and to protect them from disclosure when objected to; unless the privilege has been competently raised. The rule does not prohibit the examination of such classes of witnesses; but it prohibits the evidence of the character described from being given in the face of an objection."

On the other hand, in a Michigan case, *Storrs vs. Scougale* (48 Mich., 387), Mr. Justice Cooley said of a physician's revelation of confidences before a commissioner, who, unlike a court, is little more than a machine for taking testimony: "This evidence ought not to be passed over without remark. * * * The physician had no business to give it. * * * If a physician is found disposed to violate both the law of the land and the precepts of professional ethics by making such a disclosure, and if counsel invite him to do so by their questions, the commissioner, in the case of so plain a disregard of the law to the third party, may well decline to be the instrument of the wrong;

at least, until he can take the opinion of the circuit judge on this subject. * * * It is to be regretted that the circuit judge did not have his attention directed to this evidence, for he would probably have ordered it stricken out at the cost of the party taking it. He would have needed to wait for no motion for that order."

However blameworthy the betrayal of the patients' confidence may be, it is not a punishable offense. In *Buffalo Loan and Trust Company vs. Knights Templar and M. & M. Association* (126 N. Y., 455), the New York Court of Appeals said: "The disclosure by a physician of information acquired in a professional character in attending a patient, when not made in the course of his professional duty, is a plain violation of professional duty, is a plain violation of professional propriety. But the statute does not prescribe a rule of professional conduct for the government of physicians in their general intercourse with society. * * * If a physician, disregarding plain obligations of his situation, should in conversation, disclose the secrets of his patients, he would, so far as we know, violate no statute, however reprehensible the conduct would be."

Yet, as already said, an action might lie for damages sustained by such a breach of duty upon the same principles as a recovery was had in *De May vs. Roberts*. (Supra).

This privilege is most often invoked in cases involving mental capacity, in negligence or so-called accident cases in litigations over disputed insurance policies, and nowhere more interestingly than in criminal prosecutions.

Theoretically, all litigation has for its end the settlement of disputes according to truth and justice. Unfortunately that is not always the purpose of litigants, who too often play to win by any means, and to pervert to uses of the same evidential rules beneficent in aim, but not infrequently, by reason of their generality, yielding evil fruit.

The question being, should A compensate B for damages sustained through the negligence of A's servant, the rudiments of fairness and honesty require that only the true causes and extent of the injury be proved. Assume that B's injury, though slight, may be assigned as the cause for a permanent, previously existing and serious condition—hernia, for example; and presume that only two persons know the history of that hernia, B's physician and his truss-maker. The former may not, but the latter may testify; yet, if the latter be put out of the jurisdiction and the physician sitting in court, B may recover damages for the hernia, in no degree due to A's fault, and that, too, although he

has displayed his condition to the world and the defense has at hand the evidence to establish the truth of its origin. Construed in this way, the rule, whatever its benefits, becomes such an aid to fraud as its framers never contemplated; for in the days of revisers, negligence and litigation had not developed into the systematized business that it has since become. "Ambulance chasers" and a certain class of professional experts were yet to be begotten out of the womb of the century by the numberless dangerous inventions for swift transportation and manufacturing purposes; and the contingent fee was looked at askance. The case is equally unjust where, a person having obtained life insurance upon false representations, as, for example, that one of his kin ever died of consumption, the testimony of physicians who have treated consumption in his family and their death certificates publicly attributing the disease to the decedent are both excluded, as the New York Court of Appeals has recently said, in *Davis vs. Supreme Lodge K. of H.*, (165 N. Y., 159), they must be. It is not intended by this to criticise that decision as a construction of the letter of the law, but to question the wisdom of a statute yielding such results. Certainly when a physician files a death certificate in the public records, its contents cease to be private and privileged: *Cessante ratione legis cessat ipsa lex*. Remedy from such evil must come through legislation, and it is regrettable that the tendency seems to be to enhance rather than minimize them. The states which do not have the rule may well pause before adopting it.

But broad as judicial interpretations have been in civil cases, they have strictly limited the rule when invoked to protect criminal aggressors. The courts have refused, as the phrase is, to make what was intended to be the patient's shield a weapon against him.

In *Pierson vs. People* (79 N. Y., 424), Pierson and Mrs. Withey were jointly indicted for murdering Mr. Withey by poison. Before decedent's death Pierson called to attend him Dr. Coe, who examined and prescribed for the patient, yet was allowed to testify to the murdered man's symptoms and condition, as he found them upon examination and learned them from the defendants. The Court of Appeals holding this testimony to have been properly admitted under the circumstances, said that if such evidence were to be excluded under the rule of privilege, it would be extremely difficult, if not impossible, to convict murderers by poison; but at the same time expressly refused, as inexpedient, to lay down a general rule applicable to all cases

and limiting the statute; and it was from this case that Mr. Justice McAdam quoted in the McGillicuddy case (*supra*). And, en passant, if, as those cases hold, one object of the statute was to prevent disgrace to the memory of the dead, then, the publication of the death certificates and results of autopsies should be included in its purview. At least we should not have a witness forbidden by one law to state the cause of death that another law orders him to reveal.

In the case of *Carlyle Harris* (136 N. Y., 423), convicted of poisoning his wife, testimony of physicians who were called to attend the unconscious girl before she died was admitted under objection and the Court of Appeals sustained the admission, declaring that it would be very loth to allow the privilege of the dead victim ever to shield the murderer. Dr. Treverton, the murdered girl's uncle, operating on his niece six months before death to remove the relics of an attempted abortion, had taken away a foetus. Harris admitted to him that he had previously operated twice, and supposed that everything had been removed. The admission of this testimony against objection was also sustained by the Court of Appeals, first, because Treverton had not been employed by defendant; second, because he had acquired no necessary information from defendant, and, third, because the court would not suffer the dead woman's privilege to shield her poisoner; the last ground quite sufficient of itself without the other two.

But, in *People vs. Murphy* (101 N. Y., 126), the Court of Appeals distinguished *Pierson's* case, wherein the privilege of the statute was invoked to protect the wrongdoer alone, from one in which it was invoked to protect as well the object of a co-partner in his crime. Murphy procured a physician to commit abortion upon a young woman. The district attorney sent to attend the girl another physician, who, having examined and prescribed for her, was allowed to testify, from his examination and what she had told him, that an abortion had been performed. The court held that here the relation of physician and patient was established. The girl had accepted the medical man's services and had a right to consider him her physician, and the court distinguished *Pierson's* case upon the ground that there the patient, being dead, could not waive his privilege in order to punish his slayer, while here, in *Murphy's* case, the patient, being alive, was able either to waive the privilege or to claim it and so prevent that disclosure in court which would not only disgrace, but tend to convict her of crime.

A still more curious case wherein the injured person's privilege was allowed to shield the criminal was *People vs. Brower* (53 Hun., 217). Defendant, a layman, having unsuccessfully attempted to procure an abortion upon a woman, called in a physician to attend her, and, in order to aid the treatment of the case, confessed what he had done and gave the details of the operation. The woman died, and, upon the attending physician's testimony, defendant was convicted of manslaughter. On appeal to the general term of the Supreme court the judgment was reversed, and this case is also distinguished from *Pierson's*, by the fact that the confession to the physician was necessary for the proper treatment of the case, and made in order to save the patient's life; to have withheld it would have made the accused a consenting party to the woman's death, which he did not design, and therefore that it could not be used against him. The case never went to the Court of Appeals.

A curious but very conceivable case that has never arisen in the courts so far as the books show would be that of one who, having given a fatal poison, with actual intent to kill, should change, or pretend to change, his murderous intent, and calling in a physician, confess to him what he had done. Upon the theory of this case last cited the admissibility of the confession would depend upon the defendant's intent, which is an issue for the jury to pass on after the evidence is all in.

As said before, anyone may waive a personal privilege, and therefore may consent that what his physician, attorney, or, so far as the law is concerned, priest, has learned of his affairs, may be made public. Provision is made in the statute for such waiver by representative of the decedents under certain circumstances. But there is often a question whether certain acts of the patient do not in themselves amount to waivers of the privilege. It has been held, for instance, that to ask a physician to witness a will is necessarily such a waiver, allowing the physician to testify to decedent's mental condition—for it is one of the functions of the attesting witness to express, if need be, his opinion as to testator's disposing mind.

It surely is unfair and contrary to the theory of judicial procedure, namely, the attainment of truth, not the regulation of a game, that one seeking to collect damages or insurance should be allowed to conceal under his privilege the truth as to his physical condition or that of his kin. Insurance companies meet this difficulty by inserting clauses in their policies by which the insured agrees to waive the privilege, and such contracts have been held valid and not contrary to public policy.

(Foley vs. Royal Arcanum, 151 N. Y., 196). But pursuant to the regrettable tendency already referred to, the New York Code of Civil Procedure (Section 836) has been further amended upon that specious theory that, by unnoticed clauses of insurance policies and other devices, waivers are obtained from the unwary, the force of which plaintiffs do not appreciate, so that now in that state a waiver must be made in open court or by stipulation of attorneys, and even the party's written waiver executed before trial is insufficient. How helpful this amendment may be to plaintiffs in fraudulently contrived negligence suits, and how far it has carried the rule away from the purpose of its framers, who fondly hoped that it could not be abused, appears from the decision in Scher vs. Street R. R. Co. (71 App. Div., 28), holding that even if a patient suffers himself to be made a clinical subject before a medical society and authorizes his physicians to publish the clinical observations in medical journals, this is not such a waiver of privilege as will open the lips of that physician upon the witness stand. Again we do not criticise the decision, which was necessitated by the law, or express an opinion upon the merits of the Scher case, but simply point out, that, in our judgment, the section as amended too often is an invitation to fraud, and obstruction to the ascertainment of truth and an ever-present help to unscrupulous "accident lawyers" and their clients in "playing the game."

It seems to most of us that if A sues to recover damages for an injury and thereby publishes it to the world, he has defeated the purpose of the statute, has nothing left to conceal and has waived his privilege. Yet this is not necessarily so in law (Dunkle vs. McAllister, 70 App. Div., 273). In New York (Hope vs. T. & L. R. R., 40 Hun., 438; 110 N. Y., 643), Missouri and Michigan, and doubtless many other states, it has been held that because A has testified to his own injuries, and has even called one of several physicians in attendance on him to testify to the nature and effect of his injuries, this is not such a waiver of privilege as to allow the defense to call his other physicians. So, in an Iowa case, and in the recent New York case of Nelson above mentioned, it has been held that if A sue for damages for injuries alleged to be due to an accident prior to which he was of sound body, this does not amount to a waiver which will permit the defense to call physicians who had treated the plaintiff prior to the accident and know his statements to be false or differ in conclusion with the other physician. But it has also been held (Morris vs. New York, Ontario and Western Railway Co., 148 N. Y., 88), that if a plaintiff has

had two physicians attending him at the same specific period of time and joining in identical examinations, and calls one of them, he waives his privilege as to the other, who may be called by the defense.

In *Marx vs. Manhattan R. R. Co.*, (56 Hun., 575), it was held where A testified as to what took place between himself and a physician that the latter might be called on to give his account of the matter. And this is the common law rule as to attorney and client. But even this was said by the Court of Appeals in the *Morris* case just cited to be doubtful law, while the case of *Treanor vs. Man. R. R. Co.* (28 Ab. N. C., 47), holding that plaintiff, by disclosing as witness his physical condition in consequence of alleged injuries, waived his privilege and permitted his physician to testify, was said to be going entirely too far. (*Dunkle vs. McAllister*, *Supra*).

It is worthy of note in both these cases of *Marx* and *Treanor*, that the physicians were not called upon to testify to a condition of disease on the part of the plaintiffs, or, in other words, to testify to anything that should annoy them, impair their good standing or disgrace them—calamities that the rule was intended to prevent—but were only asked to show that plaintiffs were in a state of good health, which ordinarily would have been very creditable to them, and only became annoying and discreditable in so far as it tended to show them to be trying to recover damages by false pretences—an amiable purpose distinctly aided by this rule of privilege.

It has also been held in New York that a waiver of privilege is limited to the trial at which it is made, and that the privilege, when waived, may be reasserted later. (*Gratton vs. Ins. Co.*, 92 N. Y., 274), and this rule is commended in *Michigan* (*Briesenmeister vs. Knights of P.*, 31 Mich., 525), its theory being, apparently, that the purpose of the statute is to allow the privilege to control evidence whenever its possessor elects to do so. But the New York rule seems to have been overruled in the case of *McKinney vs. Railroad* (104 N. Y., 352), holding more consistently with the purpose of the statute, that where the patient has once revealed his secrets, he may not thereafter conceal them under this rule of privilege.

What is, perhaps, of more interest to physicians is that while there are cases in the books allowing them to testify in an action for fees to the nature of the patient's disease, even when of a venereal nature, yet the rule seems to be to the contrary. The case of *Young vs. Spalding*, noted as ready for trial

(Law Notes, June 19, 1902), will, if carried up, probably settle the point.

As to the reporting in medical books and papers of cases in such manner that the patients can be identified, there seems no statute to prevent it, although the patient might bring an action for resulting damages on the principle above stated of breach of duty, or for defamation, if they were untrue and injurious statements, and in a droll Michigan case, *Sullings vs. Shakespeare* (46 Mich., 408), the court censured such reporting in strenuous terms.

But these perplexities and conflicts of decisions are trouble for lawyers, not for the physicians, whose duty is very simple, and one that a gentleman will instinctively follow, namely, to regard all information coming through professional relations as inviolable, and to give no testimony concerning his patients without their assent save under the instruction and the order of the court. If counsel do not object to his examination in this regard, he may still decline to answer until directed to do so by the court.

WHEN THE DOCTOR CAN'T WAIT.

Wife—"Say, dear, why don't you pay the doctor's bill?"

Husband—"He can afford to wait."

Wife—"Well, you didn't seem to think he could that night you were sick."

THE RIGHT OF THE STATE TO PASS LAWS REQUIRING THE VACCINATION OF CHILDREN.

A decision in regard to the right of the state to pass laws requiring the vaccination of children as a condition of their attending the public schools has been made recently in the state of Pennsylvania.

The father of a child was denied permission to the public school on account of not being vaccinated in accordance with the rules of the Board of Education and an act of the legislature, brought a mandamus suit in the city of Philadelphia. The Court of Common Pleas maintained the right of the Board of Education to demand such vaccination, and, on appeal, the Supreme court sustained the ruling of the lower court in the following terms: "We think that the court below did not err in the ruling referred to." In the case, *Duffield vs. Williamsport School District*, we hold that school directors in the exercise of a sound discretion may exclude from the public schools pupils who have not been vaccinated.—*Medical Century*.



Medico-Legal Bulletin.



PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. 2

AUGUST 1904

No. 11

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

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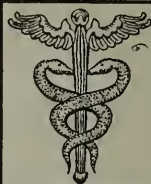
In trials for murder the point has sometimes been raised by the defense that death had not resulted from the wound inflicted by the accused, but from the subsequent surgical treatment, and that this should be considered in mitigation of the crime. We have the converse of this view in the case of the woman who stuck a knife into a man's heart and has been in jail awaiting the result of his injuries. By all the laws of probability the man ought to have died. The wound was of a kind generally recognized as fatal. But the surgeons got hold of him and sewed up his heart, and in due time he recovered. Thereupon the woman was discharged from custody, and the man, in the exuberance of his delight, declares that she shall not be prosecuted. Some curious questions, moral, ethical and legal, are raised by this extraordinary occurrence. How far was the degree of guilt or innocence which attached to the woman's act affected by the degree of perfection which surgery has attained? A few years ago a man so wounded would surely have died, and the person who inflicted the wound would have been convicted of manslaughter at least. Now the surgeons, by a rare chance, save his life, and as nobody is the worse off, no penalty is incurred. Are we to regard science as the handmaid of crime; or, on the contrary, as helping to abolish crime? And suppose the surgeons had failed, who would have been responsible?—*Jour of A. M. A.*

It is said of Diogenese, that, meeting a young man who was going to a feast, he took him up in the street and carried him home to his friends, as one who was running into imminent danger, had not he prevented him. What would that philosopher have said had he been present at the gluttony of a modern meal? Would not he have thought the master of a family mad, and have begged his servants to tie down his hands, had he seen him devour fowl, flesh and fish; swallow oil and vinegar, wines and spices; throw down salads of twenty different herbs, sauces of a hundred ingredients, confections and fruits of numerous sweets and flavors? What unnatural motions and counterferments must such a medley of intemperance produce in the body! For my part when I behold a fashionable table set in all its magnificence, I fancy that I see gout and dropsies, fevers and lethargies, with other innumerable distempers, lying in ambuscade among the dishes. —Joseph Addison, in *The Spectator*.

PHYSICIANS' FEES FROM RICH PATIENTS.

With regard to the enormous fees sometimes charged for attendance on wealthy people, to which so much exception is taken by persons who have nothing whatever to do with the matter, we can see no good reason for finding fault with them. Suppose the patient is a millionaire, who spends hundreds of thousands yearly on the mere pleasures and luxuries of life, and who cannot possibly get more out of existence than he does. When illness attacks him all the delight of life vanishes and his money is powerless to help him. With death staring him in the face he would gladly give half his wealth to any one whose skill could avert death and restore him to health; but no physician drives such a bargain with him in his dire extremity; and, after all, the largest bill ever yet sent in is small compared to what the patient would pay to a lawyer for gaining a suit, or expend on one or other of his costly pleasures when he is in health. To the honor of the profession, be it said, there are very few instances on record of large fees being charged to those whom the doctor knew to be in such circumstances that it would be difficult for them to pay them; while hundreds of instances are known of the most generous treatment of patients in poor circumstances by men who are in the habit of receiving large sums for everything they do.—*Charleston, (S. C.) News and Courier*.

Judicial Decisions.



Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

THE RESPONSIBILITY OF A PHYSICIAN WHERE HIS PATIENT DECLINES CERTAIN TREATMENT.

There is undoubtedly a difference of opinion in the profession as to what a physician or surgeon should do if a patient after a plain statement of facts should decline to follow the course of treatment advised or refuse to be operated upon. On the one hand, there are physicians who say they would at once retire from the case and leave it to be handled by other physicians; and, on the other hand, there are physicians who say they would feel under the circumstances that they should do the best they could after giving the patient to understand that he and his family assumed full responsibility for the result.

The courts have passed a number of times upon this question. One of the most important of these cases is that of McCandless vs. McWha. This was a case in which the patient sued his physician for alleged malpractice in the setting and treatment of his broken limb. There were a number of questions involved; one of them was the question of the co-operation of the patient in the treatment. On this point the court stated: "Nothing can be more clear than that it is the duty of the patient to co-operate with his professional adviser and to conform to the necessary prescriptions, but if he will not, or under the pressure of pain cannot, his neglect is his own wrong or misfortune, for which he has no right to hold his surgeon responsible. No man may take advantage of his own wrong or charge his misfortune to the count of another. We do not mean to intimate an opinion that this case was properly treated, or that the leg could not have been restored to the length of its fellow, but in view of the diversified circumstances that attend cases of this sort it is very important that the true rule of professional responsibility should have been given to the jury, with instructions that they should inquire from all the facts

in proof whether the defendant had come up to or had stopped short of it."

On the other hand, if an operation had been declined by a patient or his friends, for rarely in strictly medical treatment is the physician interfered with by a patient or his friends, the case still exists and must be handled by some one.

Undoubtedly there are many forms in which an intelligent patient has every right to decline operation, for physicians themselves are by no means unanimous in their views with regard to the best methods of surgical procedure. For example, in a case of cancer of the cervix, uterus or appendages, many skillful surgeons recommend operation in the early stages, claiming excellent results, while others with equal experience and equal judgment condemn interference where malignancy exists. So it is with many other conditions, but the physician must impress on the minds of his patient and his family that they must assume the responsibility if they reject his proposed line of treatment.—The Medical Times.

RESPONSIBILITY FOR SPONGES IN SURGICAL OPERATIONS.

A suit for malpractice was brought some time ago against a surgeon of Columbus, Ohio, for the death of a patient from a gauze sponge which had been left in the abdomen after a gallstone operation. The operation had been made in a public hospital with the head nurse of the hospital personally in charge of the sponges. In response to the surgeon's inquiry, thrice repeated, she had assured him that all her sponges were accounted for, and the abdomen was closed. Recovery was prompt, but some two months later obstruction of the bowels developed and an operation, made as a last resort, revealed the presence of a sponge as the cause of the obstruction. The attorneys who instituted the suit claimed that the nurse was technically the agent of the surgeon and that the latter was therefore responsible for the blunder. A similar suit, on similar grounds, instituted about the same time against an Atlanta surgeon, was tried some months ago and the surgeon promptly acquitted; the individual responsibility of the nurse having apparently been proven to the satisfaction of the jury. The decision in the Atlanta case is supposed to have been the actuating cause which recently led the attorneys at Columbus to withdraw their suit, and institute proceedings against the hospital where the operation was made. The decision in the Atlanta case and the

withdrawal of the suit in the Columbus case will go far to establish the principle that when the surgeon is operating with a graduate nurse in charge of the sponges he can not be held responsible for her carelessness, unless from previous experience he knows her to be untrustworthy.—Detroit Med. Jour.

FRAUD ORDER AGAINST "VITALITY PILLS" ADVERTISER UPHELD.

The United States Circuit Court in Missouri (Thayer, Circuit Judge), says that in the case of the Missouri Drug Company vs. Wyman, the company contended that all of the representations made by it to induce people to purchase its "vitality pills" were matters of opinion, and, being of that character, that persons who purchased on the strength thereof could not be said to have been defrauded. It further insisted that because all of the fraudulent representations that were relied on to prove the existence of a scheme to defraud were mere expressions of opinion, they could not, as a matter of law, accomplish a fraud; and that the postmaster general had no jurisdiction to find that the company was engaged in a scheme to defraud, and on the strength of that finding deprive it of the privilege of using the mails. This argument was based largely on some observations of the Supreme court of the United States which were made *arguendo* in the case of *School of Magnetic Healing vs. McAnnulty*, 187 U. S., 94, reported on page 122 of *The Journal*, Jan. 10, 1903. In that case, however, it was a conceded fact (the case having passed off on a demurrer to the bill, which admitted all of its allegations), that the defendant who was proceeded against was doing business and inviting patronage from those having physical ailments on the professed theory that the human mind is largely responsible for bodily ailments, and that these could be cured or ameliorated by influences brought to bear on the mind of the patient, and that persons received treatment from the defendant with full knowledge that it was administered on that theory. In view of these facts the Supreme court said, in substance, that the theory on which the defendant administered medical treatment might be erroneous, but no one could say with certainty that it was erroneous inasmuch as the truth or falsity of the theory was wholly a matter of opinion; that those who received treatment with knowledge of the principle on which it was based could not be heard to say that they were defrauded; that, in view of the admission made by the government, it was legally impossible to say that the defendant was engaged in a

scheme to defraud, and that the postmaster general had made a mistake of law (on account of which a court of equity could afford relief), in finding the existence of a scheme to defraud on an admitted state of facts where no fraud was possible. That case, the Circuit court says, bore little analogy to this one, in which it appeared that the company, to induce the sale of its "vitality pills" for the cure of lost manhood, by its advertisements and circulars made certain statements of matters of fact which the postmaster general may have found, and probably did find, to be false and misleading, and to have been made with intent to deceive the public. It must also be borne in mind, the court says, that it is not always true that a misrepresentation, to amount to a fraud, must be a misrepresentation as respects some matter of fact, although such is the general rule. There are well-established exceptions to this rule. An opinion may sometimes be expressed under such circumstances as will render a person guilty of fraud; as, where one who is an expert, or who possesses peculiar knowledge of the value or quality of the article which he does not honestly entertain, doing so for the purpose of deceiving him. In view of this exception to the general rule, some of the statements which the company appeared to have been in the habit of making with respect to the merits of its "vitality pills," treating them as expressions of opinion, might well be found to be false and fraudulent if they were not entertained by the company, but were made solely with a view of inducing the unwary to purchase its "vitality pills." Even if it believed that these pills had some medicinal value—which they may have had, as they appeared to be compounded in part of some old and well-known drugs which possessed some tonic properties—yet the latitude ordinarily allowed to a vendor to puff his wares would not justify such representations as the company's literature disclosed. And the court holds that the finding of the postmaster general that the company was engaged in a scheme to obtain money through the mails by means of false and fraudulent representations was one which this court was not authorized to review or overrule, inasmuch as the finding was based on evidence which certainly tended to sustain it, and in that event the statute empowered the postmaster general to judge of its weight and sufficiency.—Jour. A. M. A.

NEGLIGENT DESTRUCTION OF AN EYE.

In the recent case of Orscheln vs. Scott, decided in the Kansas City Court of Appeals, a verdict for \$2,500 is held not excessive. In this case no mitigating circumstances were proved.

OPERATIONS WITHOUT CONSENT.

According to a ruling in Chicago by Judge Kavanaugh, a surgeon may perform an additional operation without the consent of his patient, if during the first operation he discovers a condition of the internal organs which renders the second one necessary to preserve the life of the patient.

The decision was rendered in the case of Mrs. Agnes Muehern against the Post-Graduate Medical School and Hospital. Mrs. Muehern was operated upon by one of the professors of the college, and, while she was under the influence of an anaesthetic, a condition as indicated was discovered, and a second operation was performed. When she regained her health she brought suit against the college. (Consent to first operation must, however, be obtained.—T. M. S.)—[Med. Rev. of Reviews.]

ASSAULT TO COMMIT RAPE AFTER ADMINISTERING CHLOROFORM.

The Supreme Court of Colorado says, in Harlan vs. People, where it affirms a conviction of a dentist of an assault to commit rape, that it is uniformly held that one who carnally knows a woman while she is in a state of stupefaction is guilty of rape. And there can be no doubt that, if the accused in this case had at the time he administered chloroform no unlawful purpose, yet, if he afterward formed the design and purpose to have sexual intercourse with the woman while she was under the influence of chloroform, and while she was in such a condition from the effects of the chloroform that she was unable to remonstrate or resist, and that while harboring such intention he undertook to have sexual intercourse with her, he was guilty of an assault with intent to commit rape, although the assault was one without violence, and although he desisted before accomplishing his purpose.—Jour. A. M. A.



ORIGINAL ARTICLES

SOME PHASES OF LEGAL MEDICINE.

The following address, by Joseph B. Cotton, appeared in the St. Paul Medical Journal:

Mr. President and Gentlemen: It shall be my purpose simply within the necessary limits of this address to present some thoughts upon, as your committee has been pleased to call it, "Some Phases of Legal Medicine." I do so with some considerable hesitancy, for I realize the importance and scope of the theme and your undoubted knowledge thereof acquired in the study and active practice of your noble profession. I realize only too keenly that nothing I may say will be new to you and that at most my suggestions can only be but the re-clothing of old ideas and principles in new garments. The relation between the physician and the lawyer, in so far as the same pertains to litigation involving the physician either as party or as a professional expert, is necessarily so close and intimate that perhaps there is some excuse for a lawyer attempting to enlighten even the St. Louis County Medical Society. I confess to a high regard for the profession of Aesculapius; perhaps this is inborn and intuitive, since my father was a devotee thereof, and I believe that there is no class of our professional men better deserving of the love, gratitude and respect of humanity than those who are honestly and intelligently devoting their lives in administering to the sufferings, curing the ills and improving the condition of mankind. The true physician, while laboring mainly for the physical well-being, is likewise a potent agency in making for the greatest mental and moral health. Since he plays and must perform such an important part in our worldly sphere, it is but right that his legal status and responsibilities should be fully defined and by him clearly understood.

In the course of these suggestions I shall, with your per-

mission, deal only with the physician as an expert witness, and with the subjects of his compensation, privileged communications and malpractice. I regret that the demands upon my time have been so great that I have not had a chance to carefully consider upon these matters and to prepare a paper worthy of this occasion. I can only submit a few general suggestions at random and crave your indulgence in so doing.

The Physician an an Expert Witness.—Since the earliest times the theory of the law has been, and a wise and salutary rule, too, it has proved to be, that the issuable facts in a case must be proved by the highest and best evidence of which the case in its very nature is susceptible. The theory and aim of the law is that the fact must always be established and that the cause must be decided in strict accord therewith. In the very nature of things and because of human limitations we can only very seldom determine the facts to a mathematical certainty. All things in life are relative and too often alleged determinations of the facts are only approximations or mere guesses wide of the mark. But such unfortunate conclusions, however, must not be deemed as an argument against the institution and the theory and aim of the law, but rather as the necessary and inevitable result of human imperfection. In consequence, on questions of science, skill or trade, or others of like character and nature, persons of skill commonly called "experts" are called in to assist in the conduct of causes in the determination of the fact and as an aid in the administration of exact justice. As you well know, these experts include physicians, surgeons and other professional men having skill in the particular matter under consideration. They may not only, like any other witness, testify to the facts within their knowledge, but in addition they are permitted to express and give their opinions in evidence. The opinions of medical men are constantly and everywhere admitted as to the cause of disease or of death, or as to consequences or effects of wounds and injuries, and as to the sane or insane acts of a person's mind as collected from a number of circumstances, and as to other subjects of professional skill in which they are peculiarly qualified. These opinions are admissible in evidence, though the witness founds them not only on his personal observation but on the case itself as proved by other witnesses on the trial. It is a general rule that scientific men called as witnesses cannot express their opinions as to the general merits of a cause but only their opinions upon the facts proved. If the facts are doubtful and remain to be found by a jury, it is held improper to

ask these experts who have heard the evidence what their opinion may be upon the cause on trial, though they may be asked their opinion upon a similar case stated hypothetically. The opinion of a physician is not admissible that a particular act for which a prisoner is tried is an act of insanity. The theory of the law is that the evidence of an expert witness is not admissible except as to such matters of science or skill or in reference to some subject about which the jury cannot be presumed to have the same degree of knowledge or skill as the witness. Under the law of this state, a physician may form and express an opinion of the nature of the injuries of a person based in part upon the statements and complaints made by the patient in relation to his condition, sufferings or symptoms at the time in the course of a professional examination into his case. The theory of the law generally is, and such is the law of this state, that the testimony of experts is receivable as an aid to the jury in forming its judgment and in determining the issues in the action upon the theory that such experts have superior knowledge or skill in respect of the matters in question and which the jury is entitled to have the benefit of. The opinions and testimony of such experts are not conclusive, but are to be considered by the jury in reaching its verdict, together with all the other testimony in the case. Ofttimes opinions of witnesses are permissible simply because it is not possible or practicable to give more definite knowledge. An illustration of this is the marketable condition and value of property. Here, it is apparent that it is not possible or practicable to give more definite knowledge, and hence such testimony is in the nature of things the highest and best of which the case is susceptible. In many cases these opinions must come from experts who have acquired skill in detecting the connection between certain external symptoms and their latent causes. In other cases, all persons are supposed to be weighed by a jury. The testimony of medical experts is necessary upon all questions which require special study and experience in order to have reliable judgments. This distinction in the law is fully enough illustrated by the question of sickness or health. All witnesses are competent to have a reliable opinion whether one whom they have opportunity to observe appears to be sick or well at the time, or whether one is seriously disabled by a blow or wound. But if the injuries are more definite, as to the particular state of disease under which one is laboring and its curable or fatal character, or as to the dangerous or general character of a wound or blow or in what particular mode or with what species

of weapon or instrument such blow or wound was inflicted. special study, observation and experience are requisite in order to express an opinion entitled to the dignity of being regarded as evidence. In examining a physician or other expert two general methods are usable and commonly employed. The physician who has heard the testimony may be questioned as to his opinion based upon the truth of such testimony, or, he may be asked his opinion upon a hypothetical case which states the essential facts or claims and assumes their truthfulness. So, in a hypothetical case embodying a person's assumed symptoms and conditions, a medical expert may be asked what in his judgment is the probability of recovery. So, where the issue is whether present bodily ailments were caused by certain injuries, a medical expert may give an opinion as to the cause of such bodily ailments founded upon a statement of the nature of the injury, the subsequent symptoms of the party and his present physical condition as testified to by others. On his cross-examination a physician testifying as an expert may be required to answer hypothetical questions put to him by counsel for the purpose of testing his skill and accuracy, where such questions are pertinent to the inquiry, whether the facts assumed in such questions are in evidence or not. Before an expert can be permitted to testify, the proper foundation must be laid, that is to say, it must be established that the proposed witness possesses the requisite skill, qualification and experience to qualify him to speak as an expert and to have more or greater knowledge in respect to the subject than a layman can be presumed to have. Whether the proposed witness is so qualified or not rests in the sound discretion of the trial judge. The expert witness cannot give an opinion as to the ultimate facts. He cannot give an opinion as to his view of the merits of the case. Those matters are for a jury's determination only, and his opinion is not competent where the subject is such that unskilled persons would be capable of forming a correct conclusion respecting it. But in all cases the medical expert's testimony is admissible on such subject as persons without professional study would be unable to judge correctly. Our rule is that the jury are the sole judges of the credibility of the witness' testimony in relation to the issuable facts; that the question as to whether the medical expert is qualified to testify is solely for the court and the weight or credence is to be given his testimony is solely for the jury.

The cross-examination of a medical expert must generally be confined to the facts to which the witness testified on his examination in chief, but it is competent to call out not only any

fact contradicting, explaining or qualifying any particular facts stated, but also any fact tending to rebut or modify any conclusion or inference from such facts. The latitude of cross-examination as to a medical expert is usually a wide one, taking within its compass all matters pertinent to the inquiry in order to test the skill and accuracy of the witness and the reasonableness of his opinions and conclusions and the worth and weight to be given thereto. This latitude in cross-examination is largely within the discretion of the trial court, and its action will not be reversed on appeal except usually for a gross and oppressive abuse of such discretion. The testimony of a physician or surgeon must be based on hypothetical question or upon the evidence in the case which he has heard, assuming it to be true, or upon facts in his knowledge acquired out of court. A hypothetical question must be based on the facts admitted or established, or which, if controverted, might reasonably be found by a jury from the evidence. That is, it must be framed in accordance with some theory which the evidence reasonably tends to support. It must embody all the facts relating to the subject on which the opinion of the expert is asked. It is improper if it assumes a material fact which is not supported by any evidence. The facts are assumed only for the purpose of the question, and the opinion of the witnesses is based wholly on the facts assumed. It follows that if the jury does not find the facts as assumed the opinion of the expert is entitled to no weight, and it becomes the duty of the court to instruct the jury to disregard it. In a hypothetical question embodying a person's assumed symptoms and condition it is proper to ask the medical expert as to the probability of recovery. The trial court in this state may permit a question to an expert witness calling for his opinion to refer him to the testimony in the case, if he has heard it, instead of stating the facts which it tends to prove. But such a question must require the expert to assume the testimony to be true. In this state, this mode of cross-examining an expert is ordinarily preferable to the use of hypothetical questions. With us, a medical expert may be asked his opinion of the condition of a person whom he has examined out of court. This opinion may be based on statements made by the patient to the expert in the course of the examination for treatment, statement concerning both past and present feelings and bodily condition or states, but on direct examination the expert cannot be asked to give such statements when they related, at the time they were made, to past feelings and bodily states. Nor can he be asked as to statements made to him by the patient concern-

ing the cause of the injury or disease. A medical expert cannot be asked his opinion based on information obtained by him out of court from persons other than the patient. He may, however, be asked his opinion of the sanity of a person whom he has observed out of court. It may be stated as a general proposition that an expert who has become acquainted with the facts of a case out of court directly and not through hearsay may be asked his opinion based on such knowledge.

In this state when a witness is called as a medical expert to give his opinion upon a matter in a case which is a proper subject for expert testimony he cannot be asked to give his opinion on other matters in the case which are not proper subjects for expert testimony. Under the guise of giving his reasons for his opinions, an expert cannot, on direct examination, give evidence bearing on the issues which would be otherwise inadmissible. Although an expert witness may use a professional treatise to refresh his memory, he is not permitted to read from it though he agrees with the opinion of the author, and likewise it is not proper on direct examination for counsel to read a professional treatise and then ask the expert if he agrees with it. Under the general rules of cross-examination, an expert may be asked any question the answer to which might tend to qualify, explain or render improbable his opinion as expressed on direct examination. While on direct evidence hypothetical questions unsupported by evidence are forbidden, on cross-examination counsel is at liberty for the purpose of testing the skill and accuracy of the witness to ask him hypothetical questions, pertinent to the inquiry, whether the facts assumed in such questions are in evidence or not. The range of such examination is within the discretion of the trial court. But it must be remembered that under the guise of testing the professional skill and knowledge of the expert, counsel cannot call out the opinion of the witness upon the issues by means of hypothetical questions unsupported by the evidence. To test the value of the opinion a searching cross-examination as to the facts, knowledge, or experience upon which it is based is permissible.

The usual means of impeaching an expert is by cross-examining him as to his qualifications, knowledge or experience and the reasons for his opinion. He may also be discredited by evidence of contradictory opinions expressed out of court. He cannot be impeached by the opinions of other experts as to his professional skill or knowledge, nor by professional treatises to which he has not referred. If he refers to such treatises and professes to base his opinion on them, they may be introduced

to show that they do not sustain him. A medical expert having in his evidence in chief diagnosed the injury to the plaintiff as a dislocation of the cervical vertebrae complicated with a fracture, and having testified, without qualification or limitation, that the accepted treatment of a dislocation of cervical vertebrae, as laid down by the medical authorities, was a reduction of the dislocation, may be asked on cross-examination whether a certain work admitted by him to be a standard authority, did not lay it down that, where the dislocation was complicated with a fracture, no physician would be justified in attempting to reduce the dislocation. An expert may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the judge considers it likely that the transaction was at that time fresh in his memory. He may also refer to any such writing made by any other person and read by the witness within the time aforesaid, if when he read it he knew it to be correct. He may refresh his memory by professional treatises. But before he can be permitted to use memoranda it must be made to appear that there is a real necessity for such aid. But there is no hard and fast rule as to the manner in which this necessity shall be made to appear; the matter lying almost wholly in the discretion of the trial court.

Upon the law of this state, in a personal injury case in which the plaintiff tenders an issue as to his physical condition, the trial court has the power, in a proper case upon proper safeguards to protect the rights of both parties, to order the plaintiff to submit to a physical examination of his person in order to ascertain the nature and extent of his injuries, and if he refuses so to do his action must be dismissed. Under our practice it is within the sound discretion of the court to subject a personal injury plaintiff to a physical examination of his person by competent and disinterested physicians or surgeons in order to ascertain the nature and extent of the injuries and aid such physicians and surgeons in giving in evidence their opinions in respect of the extent and permanency of such injuries or otherwise, and where the application is seasonably made our Supreme court holds that a refusal to grant such an application for inspection is an abuse of discretion upon the part of the trial court. This rule and practice of our court is a wise and salutary one, as we all know that many of these personal injury cases are without merit, and where the symptoms are only subjective, and it is but right and proper, as an aid to the jury in determining the truth or falsity of the issues and whether or not the injuries complained

of exist, and if they exist, their nature and extent and the probabilities of their permanency or otherwise, that medical experts should be given the opportunity of a personal examination and thereby have the benefit of such examination in forming and expressing their opinions pertinent to the inquiry. Our trial court in this state has in a few instances gone so far as to make an order, upon the application of the defendant and the consent of the plaintiff, appointing physicians to make a personal examination of the claimant to determine the nature and extent of the injuries. In such cases the testimony of the physicians related solely to the physical condition of the plaintiff and the probabilities as to the cause of his condition. I do not regard this as a safe practice and question its propriety, and in my own practice have uniformly followed the method of making a reasonable demand before or during trial for leave to examine the person as an aid to and for the benefit of our expert witnesses.

In law, the physician or surgeon or other expert, in his own behalf, is privileged in all instances where it reasonably appears that his answers to certain questions will have a tendency to expose him to a penal liability or to any kind of punishment, or to a criminal charge. The authorities are exceedingly clear that the witness is not bound to answer and that he may claim protection at any stage of the inquiry whether he has already answered the question in part or not at all. If the fact concerning which the witness is interrogated forms but one link in the chain of testimony which might convict him he is likewise protected, and where it may tend to criminate or expose the witness is the point upon which the court is bound to instruct him and which the court will determine upon all the circumstances of the case, but without requiring the witness fully to explain how he might criminate himself by the answer which the truth would oblige him to give. This is sound, for if the witness were obliged to show how the effect would be produced, the protection which this rule of law is designed to afford him would be wholly destroyed. It must be remembered, however, that the court will not prevent the witness from answering if he chooses; it will only advise him of his right to decline to answer. You must also remember that in all cases where the physician or other expert, after having been advised of his privilege, chooses to answer, he is bound to answer everything relating to the transaction. Remember the privilege is his own and not that of the party litigant. Counsel will not be permitted or allowed to make the objection for him. If the witness declines answering, no inference of the truth of the fact is permitted to be drawn from

that circumstance, and no answer forced from him by the presiding judge after he has claimed his privilege, his protection, can be afterwards given in evidence against him. It is well established, however, that if the prosecution to which he might be exposed is barred by lapse of time or statutory limitation, the privilege ceases and the witness is bound to answer.

Privileged Communications.—By this term in the law of evidence we mean that class of evidence which, while relevant to the matters in dispute, is rejected by the courts or rendered inadmissible by statutory provision upon the ground of public policy, because greater mischiefs would probably result from requiring or permitting its admission than from its refusal. To illustrate: It is well established as a general rule that for reasons of state and policy matters which concern the general conduct of the affairs of the state or government, or involve state secrets, should not be disclosed in evidence. It is considered that the executive or heads of departments are the exclusive judges of the propriety of refusing to testify as to a particular matter or to produce certain documents. As you well know, there are peculiar and confidential relations in which it is the policy of the law, in the furtherance of justice and in the observance of the inalienable rights of human beings, to encourage confidence and preserve that confidence inviolate. For these reasons, our statutory law, as the growth and creature of an advancing and enlightened civilization generally prescribes, and so does in this state, that a person cannot be examined as a witness in a number of cases, and among these may be mentioned the relation existing between husband and wife, attorneys and clients, priests and communicants and physicians and patients. So far as here pertinent, our statute in effect is that a regular physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient. This privilege extends only to information given by the patient to the physician for the purpose of treatment, and of course, is such privilege under the statute as may be waived by the patient. You will of course understand that if the patient is a party litigant, he may call in his own behalf his physician or surgeon, but that, unless he is willing and waives the privilege, such physician or surgeon cannot be called by the adverse party as an expert witness. This privilege, to my mind, is founded upon right and is necessary for the purpose of protecting and keeping inviolate the most sacred and highest confidential relations in life. To

illustrate the scope and effect of our statute, let me briefly call your attention to a Minnesota case which was an action against a physician for malpractice in the treatment of the plaintiff's broken arm. On the trial, Dr. Staples, of Rochester, now deceased, I believe, testified as follows: "I know the plaintiff; I saw him before the trial at my office. He did not come to consult me or have me act for him as a physician or surgeon. I cannot say what the purpose of his visit was. I distinctly told you I would give you no opinion in the premises. The visit was not to enable me to prescribe or act for the plaintiff." The defendant's counsel then asked this question: "What did the plaintiff then say to you about his suffering pain after Dr. Cross bandaged his arm?" To this plaintiff's counsel objected that it was a privileged communication. This objection was overruled, and the witness answered. The Supreme court, speaking through Berry, justice, said: "The facts communicated by plaintiff to Dr. Staples, a regular physician and surgeon, were, as it appeared affirmatively, not information acquired in attending plaintiff as a patient which was necessary to enable him (Staples) to prescribe or act for plaintiff as such patient. The communication not being privileged under our law, was, therefore, properly permitted to be proved." In the case mentioned it appeared that the plaintiff went to Dr. Staples' office, had a talk with the doctor and exhibited to him the bones of an amputated hand. Dr. Staples refused to give an opinion to him in the premises. The plaintiff's attorney was with him on that visit. The visit was not to enable Dr. Staples to prescribe, but to obtain his opinion on the facts in the case to enable the plaintiff's attorney to conduct the action.

At common law communications from the patient to his physician were not privileged, but on considerations of public policy laws have been enacted in most states and jurisdictions forbidding the disclosure in evidence against the will of the patient of information acquired by physicians in their professional capacity. This rule I regard as highly beneficial and is based upon elevated grounds of policy, and it ought not to be frittered away by refinements. It is not to be forgotten, however, that litigants have their rights, and that when parties take the stand as witnesses to establish by oath the causes of action declared upon, the state of facts to give immunity under the statute of privileged communication ought to appear distinctly before making any exclusions of proof of contradictory admission. The courts ought always to see to it that these statutes are not used as a mere guard against the exposure of untruth.

and that this beneficial rule, which is intended only as a shield, is not to be turned into a flaming sword. In order for these statutes to apply the relation of physician and patient must exist, or at least the circumstances must be such as to impress the patient with the belief that such relation exists. It is not, however, necessary in order to exclude the testimony of a physician that he has been employed by a patient, for if this were necessary the fact that physicians are frequently called in by other physicians or friends, or by strangers would to a very great extent destroy the usefulness of the rule. To illustrate: It has been held that where a man, responsible for an accident by which another has been injured, sent a physician employed and paid by him to attend the injured person the rule or privilege applied in full force; but it is otherwise where the physician is sent merely to ascertain the extent of the injury or the circumstances attending the accident in view of a possible claim for damages and gives the injured person no reason to believe that he intends to treat him professionally, or that he is acting otherwise than in the interest of the person by whom he is sent. So, likewise, the privilege is held not to apply where a physician is sent by a county attorney to examine into and make a report as to the mental and physical condition of a prisoner, though it is otherwise if such prisoner is led to believe that the object of the visit is to give him professional attendance which he needs. In order that information acquired by a physician may be privileged he must have been acting professionally when he acquired the information and the term patient in the statutes has been held to include persons under a disability such as infancy, lunacy, injury, etc. The privilege is not limited to communications with the patient alone, but fully applies to communications with physicians attending or consulting upon the same case. So, too, disclosure of communications between physician and patient cannot be made by any other person whose intervention is strictly necessary to enable the parties to communicate with each other. This prohibition against the physician's divulging information acquired while attending a patient excludes his examination as to any information so acquired, whether actually obtained from statements of the patient, or of others present at the time, or gathered from his professional or surgical examination. The physician will not be allowed to disclose the nature of a disease or ailment of his patient, and it has been held that the prescriptions of a physician for a patient could not be introduced in evidence or their ingredients explained. It has also been held that he cannot be allowed to

testify to his patient's previous state of health where his only knowledge is acquired by an inspection of and conversations with the patient as his physician. The privilege is very generally restricted, however, to information necessary to enable the physician to prescribe for or treat the patient. The tendency of our courts is toward a liberal construction of the rule, and the presumption is that the information would not have been imparted except for the purpose of aiding the physician in prescribing for his patient. The privilege must be claimed by the patient, or his personal representatives, or the beneficiary in a policy of insurance on the life of the patient, and the party claiming the benefit of this privilege must show the facts which bring the case within the statute. The mere fact that a doctor is the family physician of a certain person or treated him professionally and the dates and number of his visits are not as a general rule within the prohibition of the statute, and the physician may be permitted to testify thereto. Where two physicians are partners, one who is present at a consultation between the other and a patient cannot testify as to what took place during such consultation. It has been held, however, in disputes between parties all of whom claim under a deceased person as heirs at law, devisees, legatees or personal representatives, either party may call the attending physician of the deceased person as a witness and the rule of privilege does not apply. So, too, statutes extending privilege to physicians are applicable in criminal proceedings as well as civil unless the matter as to which it is sought to introduce the testimony of the physician would throw light upon the guilt or innocence of the prisoner, in which case the privilege does not apply. It has been held that statements or affidavits of attending physicians of a deceased person furnished to an insurance company with the proofs of death are not privileged, and a physician who has attended a patient may give an opinion as a witness upon a hypothetical state of facts expressed in a question which excludes all knowledge of the condition of a patient derived while in professional attendance. The rule is that where a patient sues a physician for malpractice this privilege does not apply as to matters connected with the treatment of the injury or disease or an operation in reference to which the malpractice is alleged, and that all these matters may be fully disclosed. So, it has been held that the mere interposition by a patient of a general denial in an action brought against him by a physician for payment of services does not prevent the application of the rule of privilege. This rule of privilege with reference to information

acquired by a physician in the performance of his professional duty, like the rule with reference to communications to an attorney from clients, remains in force until removed by the client, patient or his representatives. It does not cease upon the termination of the relation by the death of either the patient or physician. As the privilege is, as you see, that of the patient and not of the physician, it follows in law that the patient may waive it whenever he sees fit to do so, and this right to waive the statutory privilege is not dependent upon any statute permitting a waiver. The privilege may be waived by the attorney of the patient at the trial. Where the patient is an infant and not sui juris, he cannot himself waive the privilege, but it may be waived by his parents, and after the death of the patient the privilege as a general rule may be waived by his personal representatives. So, the beneficiary in a policy of life insurance, may in an action waive the privilege attaching to communications between the insured and his physician. This waiver may generally be implied unless, as in the case of some states, the statutory requirement is that it shall be express. So, it has been held that the applicant for life insurance may waive the privilege by a stipulation to that effect in his application. The courts say there is nothing against public policy in such a waiver, and that it will be binding upon all who claim under the contract of insurance. A patient waives his privilege when he testifies as to privileged matters or calls the physician to testify thereto. There is no waiver, however, in the patient going on the stand and testifying generally or offering the physician as a general witness, and the privilege as against testimony of one physician with reference to information acquired by him which is within the privilege, is not waived by calling another physician to testify as to other and entirely distinct matters. I call your attention to another rule of law in effect that, after the testimony of a physician has been received without objection, it is too late to raise the question of competency by a motion to strike out the testimony.

(Concluded in October.)

Doctor: "I am slightly in doubt as to whether yours is a constitutional disease or not."

Patient: "For heaven's sake, doctor, have I got to go to the expense of appealing to the United States Supreme court to find out whether it is or not?"—Richmond Dispatch.



State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

STATES THAT HAVE NO MEDICAL SCHOOL.

The following states and territories contain no medical college: Arizona, Delaware, Florida, Hawaii, Idaho, Indian Territory, Montana, Nevada, New Jersey, New Mexico, North Dakota, Rhode Island, South Dakota, Utah and Wyoming.

POISON IN CHEAP CANDIES.

In the office of the deputy state commissioner of agriculture is a jar containing a stick of paraffin two inches long, beside which repose four small and apparently harmless cakes covered with chocolate. The paraffin was extracted from similar cakes on which it had been used to coat the chocolate to keep it fresh. The report of the department's chemist states that paraffin to the amount of 8 per cent. has been found in "velvet kisses." Various other cheap candies, which were sold in street stands and stores near school houses, disclosed traces of oxide of lead and injurious analine dyes when analyzed by the agents of the department.

These adulterants are all gastric irritants. They become peculiarly harmful in hot weather, when the childish digestion is more easily upset. They are undoubtedly directly responsible for dangerous enteric troubles, and contribute largely to the high summer death rate among children.

The department's activity in detecting and suppressing the sale of deadly "sweets," supplementing as it does the work of the board of health, deserves great praise.

To render it the more effective the offending dealers should be prosecuted to the full extent of the law, and an example made of them which will render them loath to risk a second offense.—New York World.

SPECIAL-TAX LIABILITY OF PHYSICIAN FURNISHING LIQUOR.

The United States Commissioner of Internal Revenue ruled, July 11, 1904, that a practicing physician who, without holding the special-tax stamp of a retail dealer under the internal revenue laws of the United States, furnishes his patients with distilled spirits, wine and malt liquors under conditions constituting sales of these liquors directly or indirectly, involves himself in liability to criminal prosecution under these laws, unless he shows that the liquors thus furnished have been compounded into medicines by the addition of some drug or medicinal ingredient. If the liquors are not so compounded he can not sell them even for medicinal use only without involving himself in special-tax liability.—J. A. M. A.

Physicians and instructors in physical culture are agitating the idea of compelling those who would become instructors in physical training to pass an examination before a medical board of examiners before they can be licensed to pursue their calling.

The idea originated with W. Ward Beam, physical instructor of the Philadelphia Battalion of the Sixth Regiment, National Guard of Pennsylvania, and former instructor at the Jefferson Medical College. Mr. Beam said that he believed it time something was done to protect the public from the dangers of wrong instruction in physical development. He said there is no doubt a great deal of harm is done by improper instruction. He had seen many cases of deformity which were the fruit of improper methods of exercise. In his own experience he had come across several cases of curvature of the spine which had been induced in that way.

He has discussed the subject with Dr. J. Madison Taylor, who has made physical culture a study, and also with Dr. Bates, chairman of the state board of examiners. They agree with him, he says, and are in sympathy with his plan.

The plan proposed is to have a bill passed by the legislature making it necessary for those desiring to be instructors in physical culture to pass an examination. This examination should test, first, the mental fitness of the candidate to be an instructor of any kind, and then his knowledge of hygiene, physiology and anatomy.

A man who has not a proper knowledge of those subjects, he says, is not fit for a physical trainer or instructor.—Philadelphia Press.



Medico-Legal Bulletin.



PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. 2

SEPTEMBER 1904

No. 12

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

\$1.00 Per Annum

SUBSCRIPTION RATES

Single Copies 15c

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EDITORIAL

"A doctor's work is never done. He is the servant, the slave, the martyr to humanity. His condition under any circumstances is not one to be envied. When he begins his practice and hangs out his shingle, the venture seems like a lottery. If he fails to get patients and is not able to build up a practice, he is the most forlorn of men. He has nothing else to turn to and has to vote himself a failure. If, on the contrary, he is successful, his practice accumulates at such a rate that he is not able to give it his attention. He is compelled to work day and night, and every year there is an endless procession of broken down physicians going away to the resorts in a feeble effort to build up the health which they have sacrificed in order to serve their fellow beings. I think it would make an interesting book if it would be possible to compile a list of the physicians who have sacrificed their lives in trying to save the spark of life in the body of their fellow men."

GENTLEMEN, why not PROTECT your EFFORTS.
SHIELD YOURSELF from the PARSIMINIOUS and the VI-

CIOUS. Have YOU any fear of MALPRACTICE suits? Allow US to DISSIPATE your TREPIDATIONS. Place your PROFESSIONAL REPUTATION in the hands of a Company which WILL NOT COMPROMISE IT, put it in the hands of a FIGHTING COMPANY who pays THOUSANDS FOR DEFENSE, BUT NOT ONE CENT FOR TRIBUTE.

JAMES TAYLOR LEWIS, of the New York bar, in discussing the MERITS of insurance companies as compared with DEFENSE COMPANIES, states as follows: "A reason WHY the CONTRACT of most INSURANCE COMPANIES IS INADEQUATE TO THE NEEDS OF THE PHYSICIAN is that the element of FIGHT IS LACKING, CONCILIATION and COMPROMISE being often the FIRST THINGS CONSIDERED." This is the doctrine we have been expounding to the Medical Profession for the last five years. WE BELIEVE THAT THE REPUTABLE PHYSICIAN AND SURGEON NEEDS DEFENSE, and that ANYTHING BUT DEFENSE IS INSUFFICIENT. It costs more to DEFEND a suit than to COMPROMISE it, and, Gentlemen, when a company will not defend a civil suit for malpractice without recourse, then, in the vernacular of the street gamin, THEY ARE "CRAWFISHING." THEY ARE AFRAID OF THEIR OWN PROPOSITION; THEY TRAMPLE ON YOU IN AN ENDEAVOR TO SAVE THEMSELVES. THEY DO NOT DEFEND YOU, THEY DEFEND THEMSELVES.

COURT CALENDARS show an INCREASE in DAMAGE SUITS, and this INCREASE is CO-INCIDENT with LIABILITY INSURANCE. The LIABILITY POLICY is a BAIT to the SHYSTER LAWYER and his DISGRUNTLED CLIENT. A COMPROMISE in any COMMUNITY adds ZEAL to the other DISSATISFIED PATIENTS and ere long EVERY PHYSICIAN in that LOCALITY is PESTERED with these OSTENTATIOUS DEMANDS.

Every MEMBER adds STRENGTH to our CAUSE. HELP US to make this Physicians Defense Company INVINCIBLE. HELP US to show the "other fellow" that THERE IS NO COMPROMISE. The UNGRATEFUL PATIENT has thrown the gauntlet at your feet. SHALL WE BUY THEM OFF AND ADVERTISE OURSELVES UNSKILLFUL, or shall we RISE IN THE MIGHT OF THE GREAT PROFESSION AND "HURL THE CHALLENGE IN THEIR TEETH."

If you have a REPUTATION TO PROTECT you need a FIGHTING COMPANY TO PROTECT IT, and, Gentlemen, WE ARE WITH YOU FROM "REVEILLE" to "TAPS."

Judicial Decisions.



Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

PRIVILEGED COMMUNICATIONS UNDER THE INDIANA STATUTE.

The Supreme court of Indiana says, in the case of *Towles vs. McCurdy*, that the provision of the statute is in these words: "The following persons shall not be competent witnesses: * * Fourth—Physicians, as to matter communicated to them, as such, by patients, in the course of their professional business, or advice given in such cases." Communications from a patient to his physician were not privileged at common law, but they have been made so by statute in many jurisdictions. The construction given to the statute forbidding the disclosure in evidence against the will of the patient of communications made to the physician in the course of his professional business has been much broader than the language of the act, and the prohibition has been held to include not only communications and advice, but all information acquired by the physician while treating or attending the patient in his professional capacity. It must be regarded as settled that the prohibition of the statute (subject to the qualification that the objection founded thereon may be waived by the patient himself, or by those who represent him) extends to all communications made by patients to physicians in the course of their professional business, to all advice given, and to all information acquired by the physician, by observation or otherwise, by means of his professional relation to his patient and in his professional intercourse with him. All that the physician sees or observes is as fully within the statute as matters which are communicated to him by his patient. The testimony objected to in this case, where a will was presented for probate, related to facts discovered and information obtained by the witness while visiting and treating, or being consulted by, the decedent, as his physician. The court says that it follows from

what has been said that the witness was not competent to testify concerning these matters, unless the objection to the evidence, which was made by those offering the will for probate, was waived by those who stood in the place of the decedent, and were authorized to represent him, or unless the statutory rule does not extend to cases where the controversy is among heirs and devisees, the set of such heirs or devisees who strive to overthrow the will can not, for their own benefit, and against the wishes of the other set, who desire to sustain it, waive the objection to evidence otherwise incompetent, to the detriment of those who seek to establish the will. The words of the statute declaring attorneys incompetent to testify as to confidential communications made to them in the course of their professional business, and as to advice given in such cases, are almost the same as those relating to physicians. It was held in *Kern vs. Kern*, 154 Ind., 29, that the rule in regard to confidential communications made to attorneys does not apply to testamentary dispositions, where the controversy is between the heirs and devisees of the testator. The Supreme court of Missouri, in *Thompson vs. Ish*, 99 Mo., 160, held that a like exception should be made as to the testimony of physicians. The same view was taken by the Supreme court of Iowa in *Winters vs Winters*, 102 Iowa, 53. See, also, *Russell vs. Jackson*, 9 Hare, 387, and *Hageman's Priv. Com.*, sec. 86. This court, however, in *Brackney vs. Fogel*, 156 Ind., 535, expressly decided that the rule announced in *Kern vs. Kern*, above mentioned, did not apply to the testimony of physicians, and that even where the controversy was confined to the heirs and devisees of the decedent, the physician of the decedent was incompetent to testify in regard to communications made to him by his patient, or facts learned by him in the course of his business as such physician. According to that case, the evidence objected to in this case was not competent, and the court holds it was error to overrule the objections to it.—J. A. M. A.

INSANITY NOT PROVABLE BY REPUTATION.

The Supreme court of Montana says that, in the case of *State vs. Lagoni*, where a witness testified that he had known another who was about 60 years of age, for 18 or 20 years, he was asked to state what was such other's reputation in the neighborhood in which he lived, among his neighbors, as to his being sane or insane. The evidence solicited was clearly incompetent. It is not permissible to prove insanity by reputation.—J. A. M. A.

LIABILITY FOR MALTREATMENT OF PATIENTS IN PEST-HOUSE.

The Court of Appeals of Kentucky says, in *City of Lexington vs. Batson's Administrator*, that the city, one of the second class, is given power to establish and enforce quarantine laws and regulations to prevent the introduction and spread of contagious diseases within the city. It is likewise made the duty of the city council to appoint a board of health, which has the same powers within the city that the county board of health has in the county under the statute. The city has established such hospital and appointed the board of health. During an epidemic of smallpox in the city Batson had been exposed to contagion, and was consequently confined by order of the board of health in the city hospital. He became sick of the disease and died. It was charged that the city suffered its pest house to become foul and unfit for use as such, and that it negligently failed to provide a suitable pest house for the detention and treatment of those who had been exposed to or had the disease; that the city failed to provide competent physicians, or suitable or any medicines, or sufficient clothing or covering, or sufficient or fit food for the inmates; that those in charge neglected Batson in his illness—by reason of all which he died. The evidence, it was conceded, was sufficient to sustain the jury's verdict finding for the administrator. But the court holds that the city was not civilly liable for the acts complained of. It says that the remedy, and, so far as it knows, the only present legal protection, of those unfortunates who may be maltreated as was charged in this suit is by an indictment of the officers in charge for misfeasance or nonfeasance, and a civil action against the individuals who have been guilty of the wrongs.

COMPENSATION FOR CARE OF ILLEGALLY-COMMITTED INSANE.

The Court of Appeals of Kentucky says, in *Michaels vs. Central Kentucky Asylum for Insane*, that Michaels was committed to the asylum, and the latter was seeking to recover compensation for taking care of him. The proof showed that he was in fact insane, and that it was necessary for him to be in an insane

asylum, though the inquest, being held without notice to him or his presence at the trial, was void. As he was in fact insane, the asylum might recover for necessities furnished him on a quantum meruit (as much as it deserved), just as a recovery may be had for necessities furnished an infant. But it appeared that Michaels, while an inmate of the asylum, except for the first few months of his confinement, worked for it, driving a cart, digging a ditch, and doing other such work on the farm run by it, he being a stout man, and able to work. Continuing, the court says that when the asylum claims under a quantum meruit for necessities furnished one who has not legally been found of unsound mind, its claim rests on the idea that it should be allowed compensation in justice and right for that which it is out on account of the lunatic. If the lunatic's services have been worth to it as much as his keep was worth, it is in fact out nothing. A man who takes care of an infant, and seeks compensation on a quantum meruit for necessities furnished him, would not be allowed anything if it appeared that the infant's services, while being so kept, were of as much value as what he received. The same principle must be applied to the asylum when it comes to claim for keeping one who has not legally been found of unsound mind, and committed to it for safe keeping. Where the inquest is legal, then the statute regulates the rights of the asylum. The state, in that event, requires that the patient be received in the asylum, and has regulated by statute on what terms he shall be kept. When the asylum claims in such a case for the keeping of a patient, its claim rests on the statute, and no allowance can then be made for the labor of the patient, as the statute provides for none. But when the inquest is illegal and void a different rule must apply, for then the claim of the asylum against the lunatic must be determined wholly on common law principles, and, while it may recover for necessities furnished the lunatic on a quantum meruit, it must credit him on the claim by what it has received from him in labor or otherwise. So, as on all the evidence in this case the court concludes that the labor of the lunatic was of value as much as his board and keep at the asylum during the time sued for, it holds that no recovery, during this period, for his keep could be allowed.—J. A. M. A.

Primus: "Your theory about moral suasion with children is pretty enough, but have you ever known it to work?"

Secundus: "Why, yes. I've never had to strike a child of mine save in self-defense."—Mod. Med. Science.

DOUBTS GRANULATED EYELIDS BEING AILMENT AFFECTING HEALTH.

The Court of Appeals of Texas says that, in the case of Brock vs. the United Moderns, an action on a beneficiary membership certificate, the medical examiner's report showed these, among other questions and answers: "(6) Have you consulted or been advised by any physician regarding your health in the last five years? If so, whom, when, and for what ailment? Answer—No. (7) If not treated within five years, how long since you were under the care of a physician, and for what cause? Answer—Never." A physician, however, testified that within the period of five years referred to the insured had consulted him with reference to granulated eyelids, and had been treated therefor for about two months. Now, as to question six and its answer thereto, when viewed in connection with the testimony of the physician that he had been consulted and had advised the insured with reference to granulated eyelids, the court says that there is some doubt in its mind as to whether the ailment of granulated eyelids is one that would be regarded as affecting the health; and, as to that question and the answer thereto, it might have been proper for the court to have permitted the beneficiary suing on the certificate to introduce expert testimony explanatory of what ailments would be regarded as affecting the health. But the court has no doubt in reference to question seven and the answer thereto. It says that there was no ambiguity or uncertainty whatever connected with this question or the answer thereto which would require explanation. The statement of the insured in answer to question seven being a warranty, and the undisputed proof showing the falsity thereof, authorized and justified the instruction of the jury to return a verdict for the defendant organization.—J. A. M. A.

A doctor tells of a very stout patient who came to him for advice about reducing his weight. The doctor drew up a careful dietary, consisting of dry toast, boiled beef, etc.

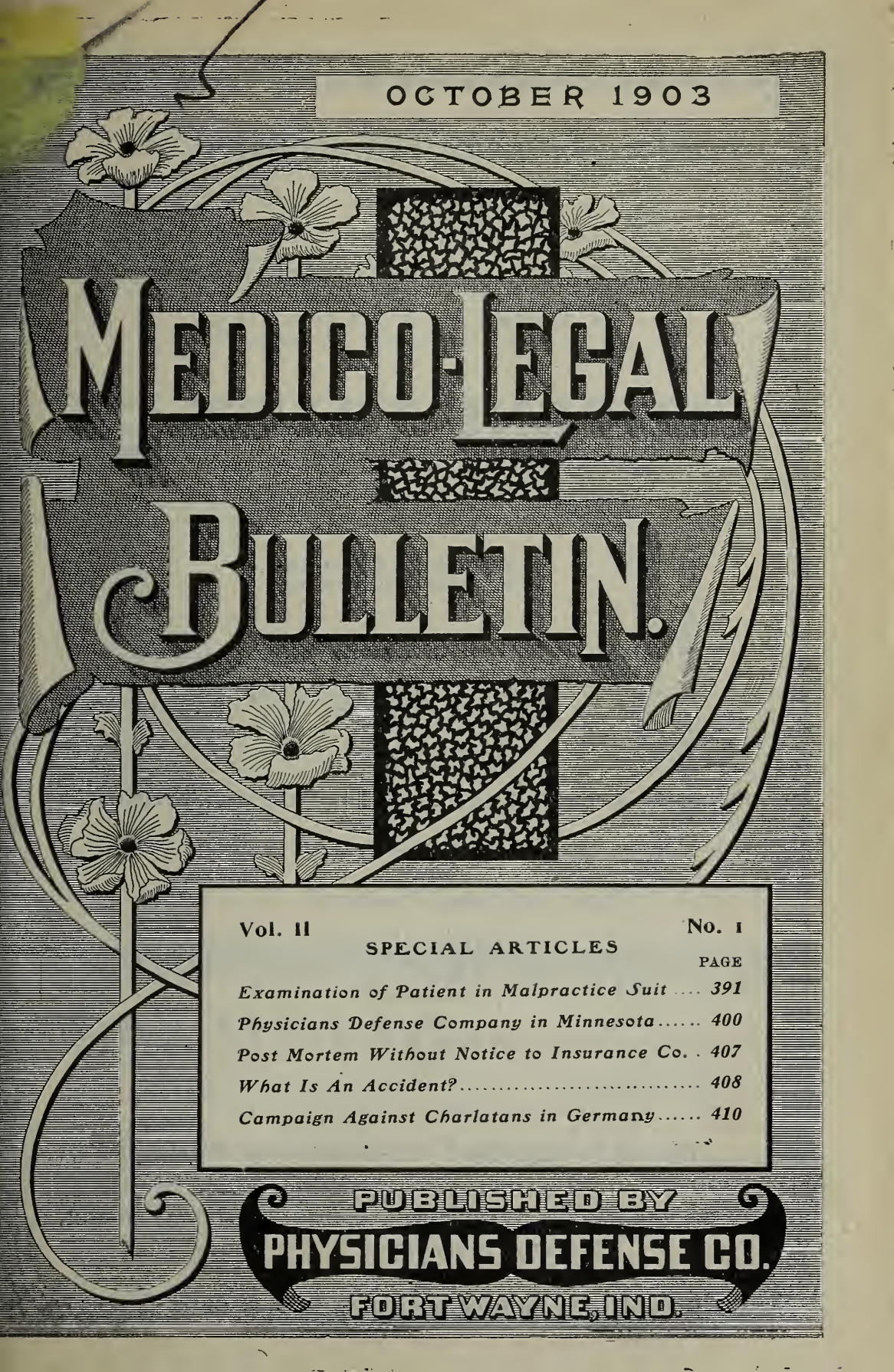
"At the end of a month the patient called and was so fat he could scarcely walk. The physician was amazed, and asked the man what he had been eating.

"'Just what you prescribed, doctor.'

"'Anything else?' demanded the physician.

"'Why, of course; I ate my regular meals, too. You didn't tell me to omit them.'"—Modern Med. Science.

OCTOBER 1903



MEDICO-LEGAL BULLETIN.

Vol. II

No. 1

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For a Defense Contract for *Medical and Surgical and Dental Services, and I understand and agree that said Contract shall be based upon the following statement of facts and agreements; and that the Company shall not be bound by statements made by any agent or broker not written or printed herein.

My full name is..... Office No..... St.

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If connected with a firm, the style is.....

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I practice under the..... School of Medicine; and have been duly Registered and Licensed to practice

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I agree that this contract shall not cover suits for damages in which services were rendered while under the influence of liquors or drugs. I agree to notify the Company at once by telegraph or telephone when demand is made, or suit commenced for damages, and will not make nor contract any expense without the written authorization of the Company, and will contribute my own time and assistance in defense of the case without charge to the Company.

I warrant each and all of the statements made herein to be true and complete. I also warrant that this application has been made and written by myself or duly authorized agent and that I understand its provisions

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In Consideration of the written and printed application, which is hereby made a part of this contract, and the sum of Twenty Dollars receipt of which is hereby acknowledged in the consideration for one year's defense, and the further payment of Twenty Dollars annually in advance on the _____ day of _____ of each year during the life of this contract

THE PHYSICIANS DEFENSE COMPANY hereby agrees to defend _____ of the City of _____ County of _____ State of _____ against all civil suits for damages for malpractice based on services rendered during the term of this contract and to pay all the cost and expense of defending such suits not exceeding **FIVE THOUSAND DOLLARS** in defense of any one suit, nor exceeding in the aggregate **TEN THOUSAND DOLLARS** in defense of suits based on services rendered within one year from the date of this contract or within any one year for which this contract shall be renewed, all in the manner and upon the conditions herein below stated, to-wit:-

Immediate notice by telegram must be given the company at the Home Office at Fort Wayne, Ind., and followed by written notice, giving full particulars of suit brought against the holder hereof.

Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil malpractice, the company will send its representative to the holder hereof. The company's representative and the holder hereof shall make a selection of a local attorney, who, together with the company's attorney, will defend the case without expense to the holder hereof.

Such defense will be maintained until final judgment shall have been obtained in favor of the holder hereof, or until all remedies by appeal, writ of error or other legal proceedings shall have been exhausted, or until the sum of Five Thousand Dollars shall have been expended in the defense; provided said company shall not be under obligation to expend more than Ten Thousand Dollars in the aggregate in the defense of suits based on services rendered during the original one year term or any renewed one year term of this contract.

The company shall not settle or compromise any suit or claim for malpractice against the holder hereof which it is bound by this contract to defend, except by the consent of the holder hereof, and then only at its own cost and expense.

Said company does not obligate itself to pay or to assume or to secure the payment of any judgment rendered against the holder hereof in any suit defended by it.

No suit or claim will be defended by this company in which the cause of action arose previous to the date of this contract.

This contract does not cover criminal prosecutions nor suits for assault, criminal abortion, foeticide, homicide or other criminal act.

The company may cancel this contract at any time upon written notice mailed to the holder hereof, and the unearned portion of the consideration shall be returned to the holder hereof.

This contract does not take effect until the consideration therefor shall have actually been paid to the company or its authorized agent; but if the holder shall have paid such consideration and shall have received from the company or its duly authorized agent a memorandum certifying such payment and that the contract is to be subsequently delivered, then this contract shall be dated as of the date of such payment and shall be in force and effect from that date.

If a note shall be accepted for the consideration of this contract or any part thereof, and the maker thereof shall fail to pay the same at maturity, the company may at its election, to be exercised at any time after non-payment of said note at its maturity, treat this contract as forfeited, and return such note, and in that case this contract shall be null and void from the beginning, and any part of the consideration theretofore paid shall be forfeited to the company.

No renewal of this contract shall take effect or be in force until the consideration therefor shall have been paid to the company or its duly authorized agent.

This contract shall be void if the application signed by the holder shall be in any particular nature.

This contract is renewable only upon payment of the annual consideration in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent.

No consideration or agreement, contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary in writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in Fort Wayne, Ind., this _____ day

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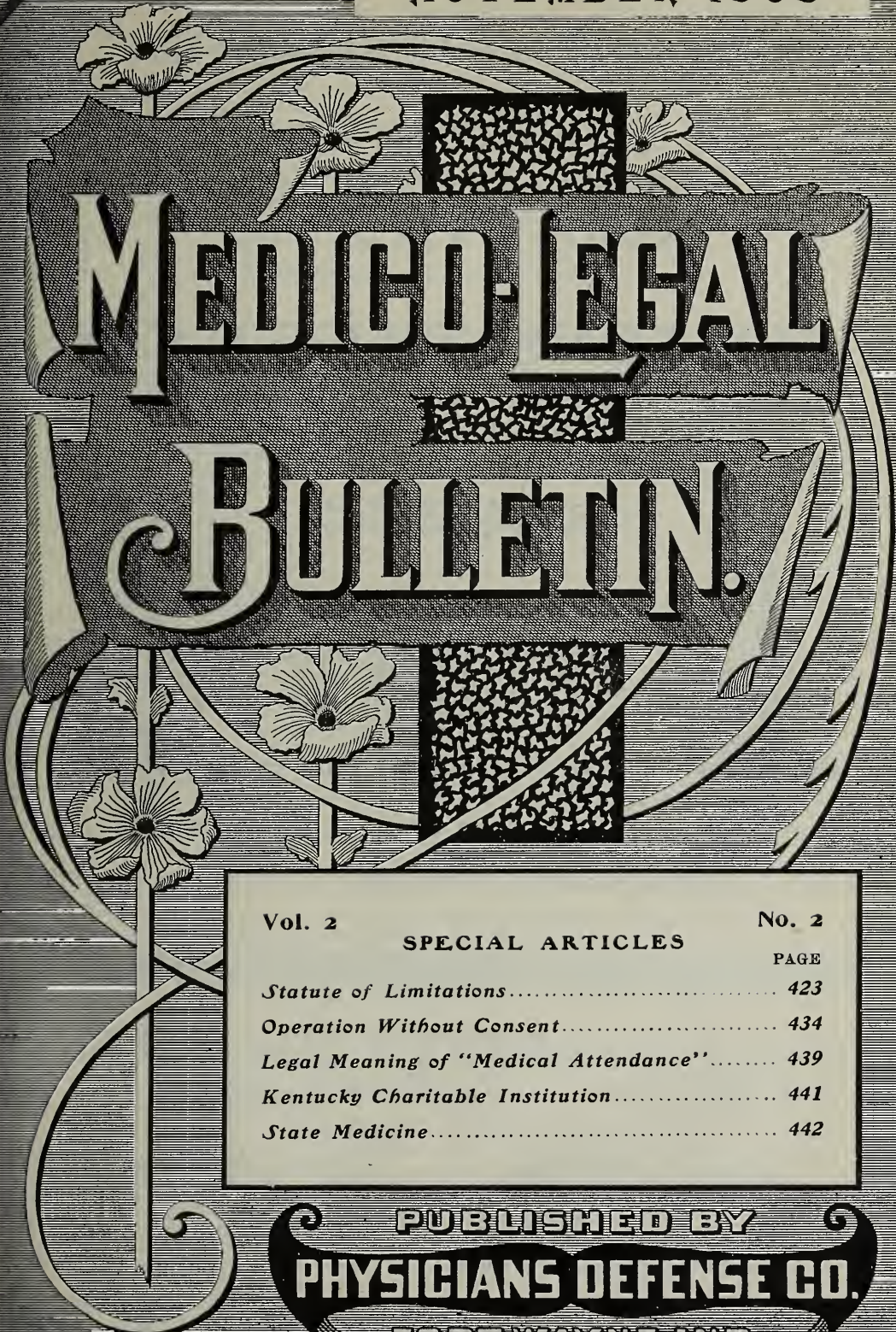
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NOVEMBER 1903



MEDICO-LEGAL BULLETIN.

Vol. 2

No. 2

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J. H. ORR,
Ass't. Cashier.

Contract No.

Agent

\$20.00

I hereby apply to the

Physicians Defense Company

Fort Wayne, Indiana

For a Defense Contract for *Medical and Surgical and Dental Services, and I understand and agree that said Contract shall be based upon the following statement of facts and agreements; and that the Company shall not be bound by statements made by any agent or broker not written or printed herein.

My full name is..... Office No..... St.

City of..... County of..... State of.....

If connected with a firm, the style is.....

I graduated from the..... In the year.....

I practice under the..... School of Medicine; and have been duly Registered and Licensed to practice

in this county, under the Laws of this State. Certificate No..... from the.....

I agree that this contract shall not cover suits for damages in which services were rendered while under the influence of liquors or drugs. I agree to notify the Company at once by telegraph or telephone when demand is made, or suit commenced for damages, and will not make nor contract any expense without the written authorization of the Company, and will contribute my own time and assistance in defense of the case without charge to the Company.

I warrant each and all of the statements made herein to be true and complete. I also warrant that this application has been made and written by myself or duly authorized agent and that I understand its provisions

Date.....190... (Applicant's Signature).....

* Cross out professions not practiced.

Received H. O.

Issued

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\$100,000.00

INCORPORATED UNDER THE
LAWS OF INDIANA.



THE Physicians Defense COMPANY

ELEKTRON BUILDING

FORT WAYNE, INDIANA

In Consideration of the written and printed application which is hereby made a part of this contract, and the sum of Twenty Dollars, receipt of which is hereby acknowledged, being the consideration for one year's defense, and the further payment of Twenty Dollars annually in advance on the _____ day of _____ of each year during the life of this contract

THE PHYSICIANS DEFENSE COMPANY

hereby agrees to defend _____ of the City of _____ County of _____ State of _____ against all civil suits for damages for malpractice based on services rendered during the term of this contract, and to pay all the cost and expense of defending such suits not exceeding FIVE THOUSAND DOLLARS in defense of any one suit, nor exceeding in the aggregate TEN THOUSAND DOLLARS in defense of suits based on services rendered within one year from the date of this contract, or within any one year for which this contract shall be renewed, all in the manner and upon the conditions herein below stated to-wit:-

Immediate notice by telegram must be given the company at the Home Office at Fort Wayne, Ind., and followed by written notice, giving full particulars of suit brought against the holder hereof.

Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil malpractice, the company will send its representative to the holder hereof. The company's representative and the holder hereof shall make a selection of a local attorney, who, together with the company's attorney, will defend the case without expense to the holder hereof.

Such defense will be maintained until final judgment shall have been obtained in favor of the holder hereof, or until all remedies by appeal, writ of error or other legal proceedings shall have been exhausted, or until the sum of Five Thousand Dollars shall have been expended in the defense; provided said company shall not be under obligation to expend more than Ten Thousand Dollars in the aggregate in the defense of suits based on services rendered during the original one year term or any renewed one year term of this contract.

The company shall not settle or compromise any suit or claim for malpractice against the holder hereof which it is bound by this contract to defend, except by the consent of the holder hereof, and then only at its own cost and expense.

Said company does not obligate itself to pay or to assume or to secure the payment of any judgment rendered against the holder hereof in any suit defended by it.

No suit or claim will be defended by this company in which the cause of action arose previous to the date of this contract.

This contract does not cover criminal prosecutions nor suits for assault, criminal abortion, foeticide, homicide or other criminal act.

The company may cancel this contract at any time upon written notice mailed to the holder hereof, and the unearned portion of the consideration shall be returned to the holder hereof.

This contract does not take effect until the consideration therefor shall have actually been paid to the company or its authorized agent; but if the holder shall have paid such consideration and shall have received from the company or its duly authorized agent a memorandum certifying such payment and that the contract is to be subsequently delivered, then this contract shall be dated as of the date of such payment and shall be in force and effect from that date.

If a note shall be accepted for the consideration of this contract or any part thereof, and the maker thereof shall fail to pay the same at maturity, the company may at its election, to be exercised at any time after non-payment of said note at its maturity, treat this contract as forfeited, and return such note, and in that case this contract shall be null and void from the beginning, and any part of the consideration therefor paid shall be forfeited to the company.

No renewal of this contract shall take effect or be in force until the consideration therefor shall have been paid to the company or its duly authorized agent.

This contract shall be void if the application signed by the holder shall be to any particular untrue.

This contract is renewable only upon payment of the annual consideration in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent.

No consideration or agreement, contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary in writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in Fort Wayne, Ind., this _____ day of _____ 190__.

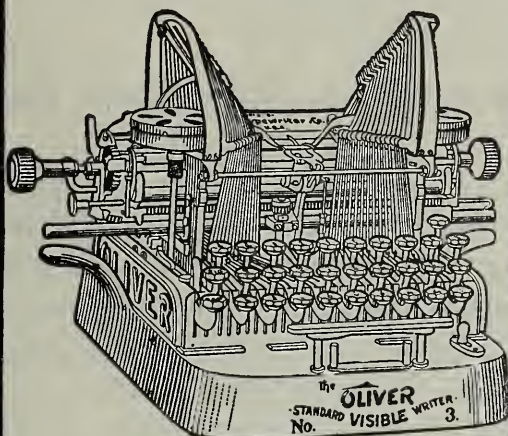
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E. H. MERRITT, Secretary.

DECEMBER 1903

MEDICO-LEGAL BULLETIN.

Vol. 2

No. 3

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If connected with a firm, the style is.....

I graduated from the.....in the year.....

I practice under the.....School of Medicine; and have been duly Registered and Licensed to practice in this county, under the Laws of this State. Certificate No.....from the.....

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* Cross out professions not practiced.

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THE Physicians Defense COMPANY ELEKTRON BUILDING FORT WAYNE, INDIANA

In Consideration of the written and printed application which is hereby made a part of this contract and the sum of Twenty Dollars receipt of which is hereby acknowledged being the consideration for one year's defense and the further payment of Twenty Dollars annually in advance on the _____ day of _____ of each year during the life of this contract

THE PHYSICIANS DEFENSE COMPANY
hereby agrees to defend _____ of the City of _____ County of _____ State of _____ against all civil suits for damages for malpractice based on services rendered during the term of this contract and to pay all the cost and expense of defending such suits not exceeding FIVE THOUSAND DOLLARS in defense of any one suit not exceeding in the aggregate TEN THOUSAND DOLLARS in defense of suits based on services rendered within one year from the date of this contract or within any one year for which this contract shall be renewed all in the manner and upon the conditions herein below stated to wit:-

Immediate notice by telegram must be given the company at the Home Office at Fort Wayne, Ind., and followed by written notice, giving full particulars of suit brought against the holder hereof.

Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil malpractice, the company will send its representative to the holder hereof. The company's representative and the holder hereof shall make a selection of a local attorney, who, together with the company's attorney, will defend the case without expense to the holder hereof.

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The company may cancel this contract at any time upon written notice mailed to the holder hereof, and the unearned portion of the consideration shall be returned to the holder hereof.

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If a note shall be accepted for the consideration of this contract or any part thereof, and the maker thereof shall fail to pay the same at maturity, the company may at its election, to be exercised at any time after non-payment of said note at its maturity, treat this contract as forfeited, and return such note, and in that case this contract shall be null and void from the beginning, and any part of the consideration therefore paid shall be forfeited to the company.

No renewal of this contract shall take effect or be in force until the consideration therefor shall have been paid to the company or its duly authorized agent.

This contract shall be void if the application signed by the holder shall be in any particular untrue.

This contract is renewable only upon payment of the annual consideration in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent.

No consideration or agreement, contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary in writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in Fort Wayne, Ind., this _____ day of _____ 190____.

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JANUARY 1904

MEDICO-LEGAL BULLETIN.

Vol. 2

No. 4

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I practice under the..... School of Medicine; and have been duly Registered and Licensed to practice in this county, under the Laws of this State. Certificate No..... from the.....

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FEBRUARY 1904

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Vol. 2

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President. Vice-President. Cashier. Ass't. Cashier.

Contract No.

Agent

\$20.00

I hereby apply to the

Physicians Defense Company Fort Wayne, Indiana

For a Defense Contract for *Medical and Surgical and Dental Services, and I understand and agree that said Contract shall be based upon the following statement of facts and agreements; and that the Company shall not be bound by statements made by any agent or broker not written or printed herein.

My full name is..... Office No.....St.

City of..... County of..... State of.....

If connected with a firm, the style is.....

I graduated from the.....in the year.....

I practice under the.....School of Medicine; and have been duly Registered and Licensed to practice in this county, under the Laws of this State. Certificate No.....from the.....

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In Consideration of the written and printed application which is hereby made, a part of this contract, and the sum of Twenty Dollars, receipt of which is hereby acknowledged being the consideration for one year's defense, and the further payment of Twenty Dollars annually in advance on the _____ day of _____ of each year during the life of this contract

THE PHYSICIANS DEFENSE COMPANY

hereby agrees to defend _____ of the City of _____ County of _____ State of _____ against all civil suits for damages for malpractice based on services rendered during the term of this contract, and to pay all the cost and expense of defending such suit not exceeding FIVE THOUSAND DOLLARS in defense of any one suit, nor exceeding in the aggregate TEN THOUSAND DOLLARS in defense of suits based on services rendered within one year from the date of this contract or within any one year for which this contract shall be renewed, all in the manner and upon the conditions herein below stated, to wit:-

Immediate notice by telegram must be given the company at the Home Office at Fort Wayne, Ind., and followed by written notice, giving full particulars of suit brought against the holder hereof.

Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil malpractice, the company will send its representative to the holder hereof. The company's representative and the holder hereof shall make a selection of a local attorney, who, together with the company's attorney, will defend the case without expense to the holder hereof.

Such defense will be maintained until final judgment shall have been obtained in favor of the holder hereof, or until all remedies by appeal, writ of error or other legal proceedings shall have been exhausted, or until the sum of Five Thousand Dollars shall have been expended to the defense; provided said company shall not be under obligation to expend more than Ten Thousand Dollars in the aggregate in the defense of suits based on services rendered during the original one year term or any renewed one year term of this contract.

The company shall not settle or compromise any suit or claim for malpractice against the holder hereof which it is bound by this contract to defend, except by the consent of the holder hereof, and then only at its own cost and expense.

Said company does not obligate itself to pay or to assume or to secure the payment of any judgment rendered against the holder hereof in any suit defended by it.

No suit or claim will be defended by this company in which the cause of action arose previous to the date of this contract.

This contract does not cover criminal prosecutions nor suits for assault, criminal abortion, foeticide, homicide or other criminal act.

The company may cancel this contract at any time upon written notice mailed to the holder hereof, and the unearned portion of the consideration shall be returned to the holder hereof.

This contract does not take effect until the consideration therefor shall have actually been paid to the company or its authorized agent; not if the holder shall have paid such consideration and shall have received from the company or its duly authorized agent a memorandum certifying such payment and that the contract is to be subsequently delivered, then this contract shall be dated as of the date of such payment and shall be in force and effect from that date.

If a note shall be accepted for the consideration of this contract or any part thereof, and the maker thereof shall fail to pay the same at maturity, the company may at its election, to be exercised at any time after non-payment of said note at its maturity, treat this contract as forfeited, and return such note, and in that case this contract shall be null and void from the beginning, and any part of the consideration therefor paid shall be forfeited to the company.

No renewal of this contract shall take effect or be in force until the consideration therefor shall have been paid to the company or its duly authorized agent.

This contract shall be void if the application signed by the holder shall be to any particular entree.

This contract is renewable only upon payment of the annual consideration in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent.

No consideration or agreement, contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary in writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in Fort Wayne, Ind., this _____ day of _____ 19____.

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MARCH 1904

MEDICO-LEGAL BULLETIN.

Vol. 2

No. 6

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.....County of.....State of.....

If connected with a firm, the style is.....

I graduated from the.....

.....in the year.....

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THE PHYSICIANS DEFENSE COMPANY

hereby agrees to defend _____ of the City of _____ County of _____ State of _____ against all civil suits for damages for malpractice based on services rendered during the term of this contract, and to pay all the cost and expense of defending such suits not exceeding FIVE THOUSAND DOLLARS in defense of any one suit, not exceeding in the aggregate TEN THOUSAND DOLLARS in defense of suits based on services rendered within one year from the date of this contract, or within any one year for which this contract shall be renewed, all in the manner and upon the conditions herein below stated to wit:-

Immediate notice by telegram must be given the company at the Home Office at Fort Wayne, Ind., and followed by written notice, giving full particulars of suit brought against the holder hereof.

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This contract does not take effect until the consideration therefor shall have actually been paid to the company or its authorized agent; but if the holder shall have paid such consideration and shall have received from the company or its duly authorized agent a memorandum certifying such payment and that the contract is to be subsequently delivered, then this contract shall be dated as of the date of such payment and shall be in force and effect from that date.

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No renewal of this contract shall take effect or be in force until the consideration therefor shall have been paid to the company or its duly authorized agent.

This contract shall be void if the application signed by the holder shall be in any particular untrue.

This contract is renewable only upon payment of the annual consideration in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent.

No consideration or agreement, contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary in writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in Fort Wayne, Ind., this _____ day of _____ 19__.

A. F. Buchanan,

President.

Secretary

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APRIL 1904

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Physicians Defense Company
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For a Defense Contract for *Medical and Surgical and Dental Services, and I understand and agree that said Contract shall be based upon the following statement of facts and agreements; and that the Company shall not be bound by statements made by any agent or broker not written or printed herein.

My full name is..... Office No..... St.
City of..... County of..... State of.....
If connected with a firm, the style is.....
I graduated from the..... in the year.....
I practice under the..... School of Medicine; and have been duly Registered and Licensed to practice
in this county, under the Laws of this State. Certificate No..... from the.....
I agree that this contract shall not cover suits for damages in which services were rendered while under the influence of liquors or drugs.
I agree to notify the Company at once by telegraph or telephone when demand is made, or suit commenced for damages, and will not make nor contract any expense without the written authorization of the Company, and will contribute my own time and assistance in defense of the case without charge to the Company.
I warrant each and all of the statements made herein to be true and complete. I also warrant that this application has been made and written by myself or duly authorized agent and that I understand its provisions
Date.....190... (Applicant's Signature).....

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THE PHYSICIANS DEFENSE COMPANY

hereby agrees to defend _____ of the City of _____ County of _____ State of _____ against all civil suits for damages for malpractice based on services rendered during the term of this contract, and to pay all the cost and expense of defending such suits not exceeding FIVE THOUSAND DOLLARS in defense of any one suit, not exceeding in the aggregate TEN THOUSAND DOLLARS in defense of suits based on services rendered within one year from the date of this contract or within any one year for which this contract shall be renewed, all in the manner and upon the conditions herein below stated to wit:

Immediate notice by telegram must be given the company at the Home Office at Fort Wayne, Ind., and followed by written notice, giving full particulars of suit brought against the holder hereof.

Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil malpractice, the company will send its representative to the holder hereof. The company's representative and the holder hereof will make a selection of a local attorney, who, together with the company's attorney, will defend the case with all expenses to the holder hereof.

Such defense will be maintained until final judgment shall have been obtained in favor of the holder hereof, or until all remedies by appeal, writ of error or other legal proceedings shall have been exhausted, or until the sum of Five Thousand Dollars shall have been expended in the defense; provided said company shall not be under obligation to expend more than Ten Thousand Dollars in the aggregate in the defense of suits based on services rendered during the original one year term or any renewed one year term of this contract.

The company shall not settle or compromise any suit or claim for malpractice against the holder hereof which it is bound by this contract to defend, except by the consent of the holder hereof, and then only at its own cost and expense.

Said company does not obligate itself to pay or to assume or to secure the payment of any judgment rendered against the holder hereof in any suit defended by it.

No suit or claim will be defended by this company in which the cause of action arose previous to the date of this contract.

This contract does not cover criminal prosecutions nor suits for assault, criminal abortion, foeticide, homicide or other criminal act.

The company may cancel this contract at any time upon written notice mailed to the holder hereof, and the unearned portion of the consideration shall be returned to the holder hereof.

This contract does not take effect until the consideration therefor shall have actually been paid to the company or its authorized agent; but if the holder shall have paid such consideration and shall have received from the company or its duly authorized agent a memorandum certifying such payment and that the contract is to be subsequently delivered, then this contract shall be dated as of the date of such payment and shall be in force and effect from that date.

If a note shall be accepted for the consideration of this contract or any part thereof, and the maker thereof shall fail to pay the same at maturity, the company may at its election, to be exercised at any time after non-payment of said note at its maturity, treat this contract as forfeited, and return such note, and in that case this contract shall be null and void from the beginning, and any part of the consideration therefor paid shall be forfeited to the company.

No renewal of this contract shall take effect or be in force until the consideration therefor shall have been paid to the company or its duly authorized agent.

This contract shall be void if the application signed by the holder shall be in any particular untrue.

This contract is renewable only upon payment of the annual consideration in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent.

No consideration or agreement, contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary to writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in Fort Wayne, Ind., this _____ day of _____ 19____.

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My full name is..... Office No..... St.

City of..... County of..... State of.....

If connected with a firm, the style is.....

I graduated from the.....

I practice under the..... in the year.....

..... School of Medicine; and have been duly Registered and Licensed to practice in this county, under the Laws of this State. Certificate No..... from the.....

I agree that this contract shall not cover suits for damages in which services were rendered while under the influence of liquors or drugs, make nor contract any expense without the written authorization of the Company, and will contribute my own time and assistance in defense of the case without charge to the Company.

I warrant each and all of the statements made herein to be true and complete. I also warrant that this application has been made and written by myself or duly authorized agent and that I understand its provisions

Date.....190... (Applicant's Signature).....

* Cross out professions not practiced.

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In Consideration of the written and printed application which is hereby made a part of this contract, and the sum of Twenty Dollars receipt of which is hereby acknowledged being the consideration for one year's defense, and the further payment of Twenty Dollars annually in advance on the _____ day of _____ of each year during the life of this contract.

THE PHYSICIANS DEFENSE COMPANY

hereby agrees to defend _____ of the City of _____ County of _____ State of _____ against all civil suits for damages for malpractice based on services rendered during the term of this contract, and to pay all the cost and expenses of defending such suits not exceeding FIVE THOUSAND DOLLARS in defense of any one suit not exceeding in the aggregate TEN THOUSAND DOLLARS in defense of suits based on services rendered within one year from the date of this contract, or within any one year for which this contract shall be renewed, all in the manner and upon the conditions herein below stated to wit:-

Immediate notice by telegram, must be given the company at the Home Office at Fort Wayne, Ind., and followed by written notice, giving full particulars of suit brought against the holder hereof.

Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil malpractice, the company will send its representative to the holder hereof. The company's representative and the holder hereof shall make a selection of a local attorney, who, together with the company's attorney, will defend the case without expense to the holder hereof.

Such defense will be maintained until final judgment shall have been obtained in favor of the holder hereof, or until all remedies by appeal, writ of error or other legal proceedings shall have been exhausted, or until the sum of Five Thousand Dollars shall have been expended to the defense; provided said company shall not be under obligation to expend more than Ten Thousand Dollars in the aggregate in the defense of suits based on services rendered during the original one year term or any renewed one year term of this contract.

The company shall not settle or compromise any suit or claim for malpractice against the holder hereof which it is bound by this contract to defend, except by the consent of the holder hereof, and then only at its own cost and expense.

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If a note shall be accepted for the consideration of this contract or any part thereof, and the maker thereof shall fail to pay the same at maturity, the company may at its election, to be exercised at any time after non-payment of said note at its maturity, treat this contract as forfeited, and return such note, and in that case this contract shall be annul and void from the beginning, and any part of the consideration therefor paid shall be forfeited to the company.

No renewal of this contract shall take effect or be in force until the consideration therefor shall have been paid to the company or its duly authorized agent.

This contract shall be void if the application signed by the holder shall be in any particular untrue.

This contract is renewable only upon payment of the annual consideration in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent.

No consideration or agreement, contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary in writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in Fort Wayne, Ind., this _____ day of _____ 190__.

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President.

Secretary

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For a Defense Contract for *Medical and Surgical and Dental Services, and I understand and agree that said Contract shall be based upon the following statement of facts and agreements; and that the Company shall not be bound by statements made by any agent or broker not written or printed herein.

My full name is.....Office No.....St.

City of.....County of.....State of.....

If connected with a firm, the style is.....

I graduated from the.....in the year.....

I practice under the.....School of Medicine; and have been duly Registered and Licensed to practice

in this county, under the Laws of this State. Certificate No.....from the.....

I agree that this contract shall not cover suits for damages in which services were rendered while under the influence of liquors or drugs. I agree to notify the Company at once by telegraph or telephone when demand is made, or suit commenced for damages, and will not make nor contract any expense without the written authorization of the Company, and will contribute my own time and assistance in defense of the case without charge to the Company.

I warrant each and all of the statements made herein to be true and complete. I also warrant that this application has been made and written by myself or duly authorized agent and that I understand its provisions

Date.....190...
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THE PHYSICIANS DEFENSE COMPANY
hereby agrees to defend _____ of the City of _____ County of _____ State of _____ against all civil suits for damages for malpractice based on services rendered during the term of this contract, and to pay all the cost and expense of defending such suits not exceeding FIVE THOUSAND DOLLARS in defense of any one suit, nor exceeding in the aggregate TEN THOUSAND DOLLARS in defense of suits based on services rendered within one year from the date of this contract, or within any one year for which this contract shall be renewed, all in the manner and upon the conditions herein below stated to wit:-

Immediate notice by telegram must be given the company at the Home Office at Fort Wayne, Ind., and followed by written notice, giving full particulars of suit brought against the holder hereof.

Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil malpractice, the company will send its representative to the holder hereof. The company's representative and the holder hereof shall make a selection of a local attorney, who, together with the company's attorney, will defend the case without expense to the holder hereof.

Such defense will be maintained, until final judgment shall have been obtained in favor of the holder hereof, or until all remedies by appeal, writ of error or other legal proceedings shall have been exhausted, or until the sum of Five Thousand Dollars shall have been expended in the defense; provided said company shall not be under obligation to expend more than Ten Thousand Dollars in the aggregate in the defense of suits based on services rendered during the original one year term or any renewed one year term of this contract.

The company shall not settle or compromise any suit or claim for malpractice against the holder hereof which it is bound by this contract to defend, except by the consent of the holder hereof, and then only at its own cost and expense.

Said company does not obligate itself to pay or to assume or to secure the payment of any judgment rendered against the holder hereof in any suit defended by it.

No suit or claim will be defended by this company in which the cause of action arose previous to the date of this contract.

This contract does not cover criminal prosecutions nor suits for assault, criminal abortion, forcible, homicide or other criminal act.

The company may cancel this contract at any time upon written notice mailed to the holder hereof, and the unearned portion of the consideration shall be returned to the holder hereof.

This contract does not take effect until the consideration therefor shall have actually been paid to the company or its authorized agent; but if the holder shall have paid such consideration and shall have received from the company or its duly authorized agent a memorandum certifying such payment and that the contract is to be subsequently delivered, then this contract shall be dated as of the date of such payment and shall be in force and effect from that date.

If a note shall be accepted for the consideration of this contract or any part thereof, and the maker thereof shall fail to pay the same at maturity, the company may at its election, to be exercised at any time after non-payment of said note at its maturity, treat this contract as forfeited, and return such note, and in that case this contract shall be null and void from the beginning, and any part of the consideration therefore paid shall be forfeited to the company.

No renewal of this contract shall take effect or be in force until the consideration therefor shall have been paid to the company or its duly authorized agent.

This contract shall be void if the application signed by the holder shall be in any particular untrue.

This contract is renewable only upon payment of the annual consideration in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent.

No consideration or agreement, contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary in writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in Fort Wayne, Ind., this _____ day

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Vol. 2

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For a Defense Contract for *Medical and Surgical and Dental Services, and I understand and agree that said Contract shall be based upon the following statement of facts and agreements; and that the Company shall not be bound by statements made by any agent or broker not written or printed herein.

My full name is.....Office No.....St.

City of.....County of.....State of.....

If connected with a firm, the style is.....

I graduated from the.....in the year.....

I practice under the.....School of Medicine; and have been duly Registered and Licensed to practice in this county, under the Laws of this State. Certificate No.....from the.....

I agree that this contract shall not cover suits for damages in which services were rendered while under the influence of liquors or drugs. I agree to notify the Company at once by telegraph or telephone when demand is made, or suit commenced for damages, and will not make nor contract any expense without the written authorization of the Company, and will contribute my own time and assistance in defense of the case without charge to the Company.

I warrant each and all of the statements made herein to be true and complete. I also warrant that this application has been made and written by myself or duly authorized agent and that I understand its provisions

Date.....190... (Applicant's Signature).....

* Cross out professions not practiced.

Received H. O.

Issued



In Consideration of the written and printed application, which is hereby made a part of this contract, and the sum of Twenty Dollars, receipt of which is hereby acknowledged, being the consideration of one year's defense, and the further payment of Twenty Dollars annually in advance on the _____ day of _____ of each year during the life of this contract,

The Physicians Defense Company
(HEREINAFTER KNOWN AS COMPANY)

hereby agrees to defend the legally qualified Physician, _____ of the City

of _____ County of _____ State of _____ against all civil suits for damages for malpractice, based on professional services rendered by himself or his agent during the term of this contract, at its own expense, not exceeding FIVE THOUSAND DOLLARS in defense of any one suit, nor exceeding in the aggregate TEN THOUSAND DOLLARS in defense of suits based on services rendered by the holder hereof, within one year from the date of this contract, or within any one year for which this contract shall be renewed, all in the manner and upon the conditions herein below stated, to-wit:-

Immediate notice by telegram, must be given the company at the Home Office at Port Wayne, Ind., of any suit brought or demand made, and the holder hereof shall immediately forward the summons, or other process served, and the complaint or petition filed, together with a full and complete history of the case and services rendered.

Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil malpractice, the company will employ a local attorney in whose selection the holder hereof shall have a voice, who, together with the company's attorney, will defend the case without expense to the holder hereof.

Such defense will be maintained until final judgment shall have been obtained in favor of the holder hereof, or until all remedies by appeal, writ of error or other legal proceedings shall have been exhausted, or until the sum of Five Thousand Dollars shall have been expended in said defense; provided said company shall not be under obligation to expend more than Ten Thousand Dollars in the aggregate in the defense of suits based on services rendered, by the holder hereof, during the original one year term or any renewed one year term of this contract.

Said company does not obligate itself to pay or to assume or to secure the payment of any judgment rendered against the holder hereof in any suit defended by it.

The company shall not compromise any suit or claim for malpractice against the holder hereof. Nor shall the holder hereof, after the company has entered upon the defense of any such suit in behalf of the contract holder, compromise the same without the consent of the company in writing first thereto had, and by reimbursement of the company its expenses theretofore incurred.

No suit or claim will be defended by this company, under this contract, in which the cause of action arose previous to the date of this contract.

This contract does not cover criminal prosecutions nor suits for assault, criminal abortion, foeticide, homicide or other criminal act, or actions arising by way of counter-claim or recoupment.

The company may cancel at any time the unexpired portion of this contract upon written notice mailed to the holder hereof, and the unearned portion of the consideration therefor, shall be returned to the holder hereof.

This contract does not take effect until the consideration therefor shall have actually been paid to the company or its authorized agent, but if the holder shall have paid such consideration and shall have received from the company or its duly authorized agent a memorandum certifying such payment and the contract is to be subsequently delivered, then this contract shall be dated as of the date of such payment and shall be in force and effect from that date.

This contract shall not lapse at the end of the time as stated above if the holder hereof shall pay the annual consideration in advance at the Home Office in Port Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent, but shall continue in force for the term or terms for which such annual consideration shall be paid; provided, however, that the liability of the company under such extension shall not be cumulative.

No consideration or agreement contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary, in writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in

Port Wayne, Indiana, this _____ day

of _____ 190__

Wm. H. Porter

President.

Secretary.

Systems for the M. D.



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Vol. 2

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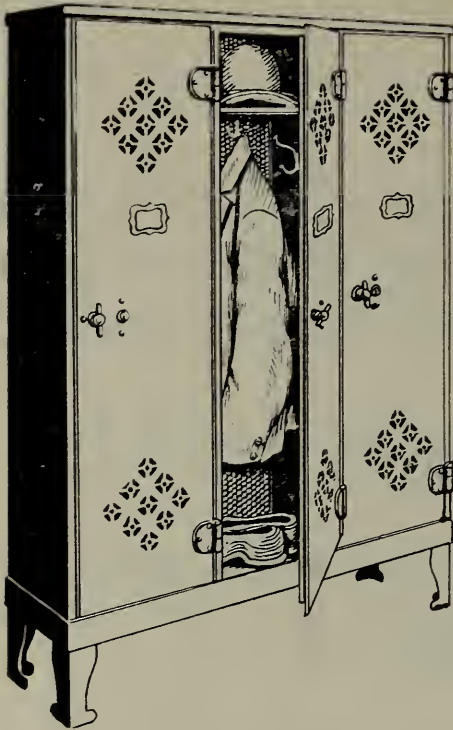
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I hereby apply to the

Physicians Defense Company

Fort Wayne, Indiana

For a Defense Contract for *Medical and Surgical and Dental Services, and I understand and agree that said Contract shall be based upon the following statement of facts and agreements; and that the Company shall not be bound by statements made by any agent or broker not written or printed herein.

My full name is.....

Office No.....St.

City of.....County of.....State of.....

If connected with a firm, the style is.....

I graduated from the.....in the year.....

I practice under the.....School of Medicine; and have been duly Registered and Licensed to practice

in this county, under the Laws of this State. Certificate No.....from the.....

I agree that this contract shall not cover suits for damages in which services were rendered while under the influence of liquors or drugs, make nor contract any expense without the written authorization of the Company, and will contribute for damages, and will not
I warrant each and all of the statements made herein to be true and complete. I also warrant that this application has been made and written by myself or duly authorized agent and that I understand its provisions

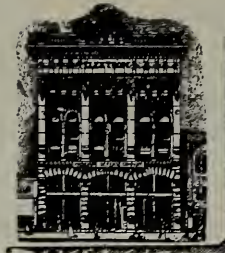
Date.....190...

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1 **In Consideration of the written and printed application, which is hereby made a**
 2 **part of this contract, and the sum of Twenty Dollars, receipt of which is hereby acknowl-**
 3 **edged, being the consideration of one year's defense, and the further payment of Twenty**
 4 **Dollars annually in advance on the _____ day of _____**
 5 **of each year during the life of this contract,**

6 **The Physicians Defense Company**
 (HEREINAFTER KNOWN AS COMPANY)

7 hereby agrees to defend the legally-qualified Physician,

8 _____ of the City

9 of _____, County of _____, State of _____

10 against all civil suits for damages for malpractice, based on professional services rendered
 11 by himself or his agent during the term of this contract, at its own expense, not exceeding
 12 FIVE THOUSAND DOLLARS in defense of any one suit, nor exceeding in the aggregate
 13 TEN THOUSAND DOLLARS in defense of suits based on services rendered by the holder
 14 hereof, within one year from the date of this contract, or within any one year for which
 15 this contract shall be renewed, all in the manner and upon the conditions herein below
 16 stated, to-wit:-

17 Immediate notice by telegram, must be given the company at the Home Office at Fort Wayne, Ind., of any suit brought
 18 or demand made, and the holder hereof shall immediately forward the summons, or other process served, and the complaint or
 19 petition filed, together with a full and complete history of the case and services rendered.

20 Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil mal-
 21 practice, the company will employ a local attorney in whose selection the holder hereof shall have a voice, who, together with
 22 the company's attorney, will defend the case without expense to the holder hereof.

23 Such defense will be maintained until final judgment shall have been obtained in favor of the holder hereof, or until all
 24 remedies by appeal, writ of error or other legal proceedings shall have been exhausted, or until the sum of Five Thousand
 25 Dollars shall have been expended in said defense; provided said company shall not be under obligation to expend more than
 26 Ten Thousand Dollars in the aggregate in the defense of suits based on services rendered, by the holder hereof, during the
 27 original one year term or any renewed one year term of this contract.

28 Said company does not obligate itself to pay or to assume or to secure the payment of any judgment rendered against the
 29 holder hereof in any suit delinquent by it.

30 The company shall not compromise any suit or claim for malpractice against the holder hereof. Nor shall the holder
 31 hereof, after the company has entered upon the defense of any such suit in behalf of the contract holder, compromise the
 32 same without the consent of the company in writing first thereto had, and by reimbursement of the company its expenses
 33 theretofore incurred.

34 No suit or claim will be defended by this company, under this contract, in which the cause of action arose previous to
 35 the date of this contract.

36 This contract does not cover criminal prosecutions nor suits for assault, criminal abortion, foeticide, homicide or other
 37 criminal act, or actions arising by way of counter-claim or recoupment.

38 The company may cancel at any time the unexpired portion of this contract upon written notice mailed to the holder
 39 hereof, and the unearned portion of the consideration therefor, shall be returned to the holder hereof.

40 This contract does not take effect until the consideration therefor shall have actually been paid to the company or its
 41 authorized agent, but if the holder shall have paid such consideration and shall have received from the company or its duly
 42 authorized agent a memorandum certifying such payment, and that the contract is to be subsequently delivered, then this contract
 43 shall be dated as of the date of such payment and shall be in force and effect from that date.

44 This contract shall not lapse at the end of the time as stated above if the holder hereof shall pay the annual consideration
 45 in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's
 46 receipt, signed by the president and secretary and countersigned by the agent, but shall continue in force for the term or terms
 47 for which such annual consideration shall be paid; provided, however, that the liability of the company under such extension
 48 shall not be cumulative.

49 No consideration or agreement contained in this contract, or application for same,
 50 can be waived or altered in any manner by any person, other than the president or secretary,
 51 in writing endorsed hereon.

52 **In Witness Whereof,** The Physicians Defense Company has caused this con-
 53 tract to be signed by its president and secretary and its official seal attached hereto in

Fort Wayne, Indiana, this _____ day

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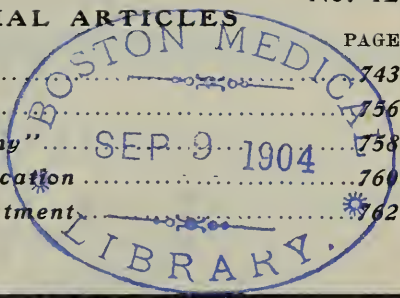
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My full name is..... Office No..... St.

City of..... County of..... State of.....

If connected with a firm, the style is.....

I graduated from the..... in the year.....

I practice under the..... School of Medicine; and have been duly Registered and Licensed to practice in this county, under the Laws of this State. Certificate No..... from the.....

I agree that this contract shall not cover suits for damages in which services were rendered while under the influence of liquors or drugs. I agree to notify the Company at once by telegraph or telephone when demand is made, or suit commenced for damages, and will not make nor contract any expense without the written authorization of the Company, and will contribute my own time and assistance in defense of the case without charge to the Company.

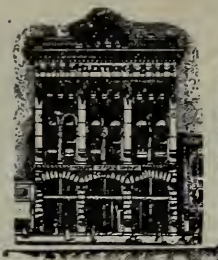
I warrant each and all of the statements made herein to be true and complete. I also warrant that this application has been made and written by myself or duly authorized agent and that I understand its provisions

Date.....190... (Applicant's Signature).....

* Cross out professions not practiced.

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HOME, 1336

In Consideration of the written and printed application, which is hereby made a part of this contract, and the sum of Twenty Dollars, receipt of which is hereby acknowledged, being the consideration of one year's defense, and the further payment of Twenty Dollars annually in advance on the _____ day of _____ of each year during the life of this contract,

The Physicians Defense Company

(HEREINAFTER KNOWN AS COMPANY)

hereby agrees to defend the legally-qualified Physician,

_____ of the City

of _____, County of _____, State of _____

against all civil suits for damages for malpractice, based on professional services rendered by himself or his agent during the term of this contract, at its own expense, not exceeding FIVE THOUSAND DOLLARS in defense of any one suit, nor exceeding in the aggregate TEN THOUSAND DOLLARS in defense of suits based on services rendered by the holder hereof, within one year from the date of this contract, or within any one year for which this contract shall be renewed, all in the manner and upon the conditions herein below stated, to-wit:-

Immediate notice by telegram, must be given the company at the Home Office at Fort Wayne, Ind., of any suit brought or demand made, and the holder hereof shall immediately forward the summons, or other process served, and the complaint or petition filed, together with a full and complete history of the case and services rendered.

Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil malpractice, the company will employ a local attorney in whose selection the holder hereof shall have a voice, who, together with the company's attorney, will defend the case without expense to the holder hereof.

Such defense will be maintained until final judgment shall have been obtained in favor of the holder hereof, or until all remedies by appeal, writ of error or other legal proceedings shall have been exhausted, or until the sum of Five Thousand Dollars shall have been expended in said defense; provided said company shall not be under obligation to expend more than Ten Thousand Dollars in the aggregate in the defense of suits based on services rendered, by the holder hereof, during the original one year term or any renewed one year term of this contract.

Said company does not obligate itself to pay or to assume or to secure the payment of any judgment rendered against the holder hereof in any suit defended by it.

The company shall not compromise any suit or claim for malpractice against the holder hereof. Nor shall the holder hereof, after the company has entered upon the defense of any such suit in behalf of the contract holder, compromise the same without the consent of the company in writing first thereto had, and by reimbursement of the company its expenses theretofore incurred.

No suit or claim will be defended by this company, under this contract, in which the cause of action arose previous to the date of this contract.

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The company may cancel at any time the unexpired portion of this contract upon written notice mailed to the holder hereof, and the unearned portion of the consideration therefor, shall be returned to the holder hereof.

This contract does not take effect until the consideration therefor shall have actually been paid to the company or its authorized agent, but if the holder shall have paid such consideration and shall have received from the company or its duly authorized agent a memorandum certifying such payment and that the contract is to be subsequently delivered, then this contract shall be dated as of the date of such payment and shall be in force and effect from that date.

This contract shall not lapse at the end of the time as stated above if the holder hereof shall pay the annual consideration in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent, but shall continue in force for the term or terms for which such annual consideration shall be paid; provided, however, that the liability of the company under such extension shall not be cumulative.

No consideration or agreement contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary, in writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in

Fort Wayne, Indiana, this _____ day

of _____, 190_____.

Wm. H. Foster

President.

Secretary.

Systems for the M. D.



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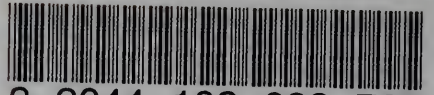
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